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Lawyers for Marianne: The Nature of Discourse on the Entry of French Women Into the Legal Profession, 1894-1926

Christine Alice Corcos

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*LET JUSTICE BE DONE:
EQUALLY,
FAIRLY,
AND IMPARTIALLY*

GEORGIA SUPREME COURT COMMISSION
ON
RACIAL AND ETHNIC BIAS IN THE COURT SYSTEM[†]

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GEORGIA SUPREME COURT COMMISSION
ON
RACIAL AND ETHNIC BIAS
IN THE COURT SYSTEM

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FOREWORD

The Georgia judicial system has the duty to dispense justice without bias of any sort. The Georgia judicial system has made a commitment to dispense justice without bias of any sort.

The Georgia judiciary demonstrated that commitment in 1993 when the Georgia Supreme Court created the Commission on Racial and Ethnic Bias. The Court then appointed a diverse and carefully selected membership of that commission. These members have proved the worthiness of the court's goal. They have worked diligently to move beyond the obvious surface blemishes and reach into the soul of the facts and perceptions of basic human relations. They have reached challenging conclusions and made a comprehensive report entitled *Let Justice Be Done: Equally, Fairly, and Impartially*. In doing this, the commission has done more than act as a "door opener." It has become a "bridge builder."

For this the commission members deserve the admiration and appreciation of the judiciary, the Bar and the people of this state. The study conducted by the commission, the conclusions reached by the commission and its report to the court will undoubtedly inspire renewed attention to the worth of every human being.

Harold G. Clarke
Chief Justice, Georgia Supreme Court
1990-1994

I. INTRODUCTION

Sometimes we talk about "equal justice," but someone said this is a redundancy. All justice by its definition must be equal because unequal justice is no justice at all. When court proceedings fail the equality test, they also fail the justice test.

Justice Harold G. Clark
State of the Judiciary Speech
January 1993

Everyone should have an interest in ensuring that equal protection and individual rights are maintained. Lawyers, judges, court administrators and all court employees should have a special interest. They are charged with upholding the Constitution and laws which express the covenant of the government with the citizens of the nation. It is the Constitution which defines the basic individual rights of each citizen. Therefore, it is appropriate that the institution of the judicial system investigate itself and assure the public that bias against races or ethnic groups is eliminated. The purpose of this report is not to attach labels to individuals or groups, to point out the faults of any group, to review past histories of maltreatment, or to assign blame. Rather, the goal of this Commission is for all people (majority and minority) to share in identifying and correcting any problems or misconceptions that exist within the court system and to assure equal opportunity and treatment now and in the future.

The Commission is confident that each individual in the court system would guarantee his or her own behavior and agree that discrimination is untenable. But individual warranties are inadequate in this instance, for we live in communities which include a diversity of peoples and jobs in which society's actions are collectively, as well as individually, judged. Therefore, it is important that all people respect all views and come to shared solutions. The Commission realizes that changes will be gradual and that confrontation and division will accomplish little. Although rules cannot change attitudes, suggestions and alternatives should be implemented to create atmospheres for diffusing misconceptions, recognizing common goals, and providing a fair opportunity and equal treatment for all who enter the courthouse. The recommendations in this report are

offered to the Supreme Court of Georgia with these concepts foremost.

The Commission was created by order of the Georgia Supreme Court on February 1, 1993, with members appointed in May of that year (see Appendix A for the complete court order creating the Commission). The Supreme Court established the scope of the Commission to:

1. Ascertain the perception of the public and the courts on the treatment of minorities and ethnic groups, as well as examine courtroom treatment and the extent to which minorities and ethnic groups voluntarily use the court system.
2. Study the administration and personnel policies of the courts, particularly looking at the representation of minorities and ethnic groups. Also, review the selection and employment processes for judicial and nonjudicial positions.
3. Investigate the impact of bias in both the criminal and civil justice processes.
4. Review any other areas it deems appropriate to complete its investigation.

To begin its inquiry, the Commission organized itself into five working groups addressing issues in the following areas: 1) Criminal Justice System, 2) Juvenile Justice System, 3) Minority and Non-Citizen Access to the Courts, Awareness of Criminal and Civil Procedures and Rights, and Language Barriers, 4) Selection, Retention, Conduct and Discipline of Judges, Court Officers and Personnel, and 5) Jury System Considerations. The Commission collected information in a variety of ways—through public hearings, forums, interviews, and statistical research. There were six public hearings held in locations throughout the state. Forums were sponsored by various organizations working with ethnic communities, such as the Latin American Association, Atlanta; the Migrant and Seasonal Farmworker's Division of Georgia Legal Services, Tifton; the Georgia Chapter of the National Asian Pacific American Bar Association, Doraville; and the Salvation Army, Gainesville. A forum was also held in a state correctional institution to assess inmates' perceptions of their treatment by the court system. Interviews were conducted with such persons as the Deans of Georgia's four American Bar Association accredited law schools, the Chairperson of the

Judicial Nominating Commission, and the Chairperson and Director of the Judicial Qualifications Commission. Several surveys were conducted by the Commission to assess attitudes and perceptions of judicial officers, clerks of court and a sample of State Bar members, to document the composition of the justice system employment work force, and to discover information about the jury process. Copies of these surveys are described in the Appendices of this report and copies are available upon request.

Generally, cooperation of the many state agencies and groups contacted was very good, but the work of the Commission was restricted by the lack of a statewide courts database, a lack of uniform data collection and maintenance requirements, and a limited timeframe for study. Secondly, the type of data currently available is often inappropriate for use in policy decisions. The number of local governments, the many levels of court, and a mix of elected, state, and county employees have made the collection of data difficult. As a result, some of the Commission's recommendations will address these information needs.

Some of the criticisms of investigations such as this, suggest that collecting data on racial and ethnic groups merely aggravates existing divisions in society. Some suggest that data should not be maintained with racial or ethnic identifiers. Despite this country's founding upon the basic principle of equality for each citizen, history has shown that in practice there have been many failures in following this ideal. African-Americans during a long period of the nation's history did not share in this equality. Immigrant ethnic minorities such as the Irish, Chinese, and Japanese also suffered discrimination at specific periods in the country's past. Recently, world politics and economics have again resulted in new waves of immigration to the United States.

Ideally, the maintenance and analysis of racial and ethnic information would be unnecessary if all individuals were treated equivalently, if each individual had the same opportunities, and if the system was not affected by varying resources. Instead, the system involves discretionary decision-making and is affected by the resources of the individuals before it. Therefore, the potential remains for certain groups to receive differential treatment or outcomes. Secondly, for groups such as immigrants to Georgia that compose only a very small proportion of the general population, analysis of data for the total population (generally

using averages) can disguise information about a particular minority. Lastly, trust is a factor, historically some of these groups have not received equal treatment and now the system has to prove itself. Therefore, the Commission believes there is a continuing need to provide a means of evaluating the treatment of minority groups.

Section 1: Minority Groups in Georgia

In its investigations, the Commission became aware that there is no clear consensus about the most appropriate and accurate terminology to refer to persons of specific races, ethnicities or national origins. For instance, in some communities in Georgia those persons defined as minorities actually compose the larger portion of the population; the studies, publications and comments of other persons mentioned in this report do not always adhere to the same terminology or definitions; the U.S. Census race and ethnicity data which are used in this report are actually estimates based upon self-identification; and particular subgroups often prefer self-selected nomenclature differing from the group categorization selected in this report. The Commission has chosen the terms below to provide as consistent and accurate a reference as possible to the minority groups in Georgia.

For the purposes of this report, the Commission uses the term “minority” to encompass persons of color, both U.S. citizens and non-citizens, including but not limited to African-Americans, Hispanics, Asians, and Native Americans, and those who face discrimination because either they are not U.S. citizens or they have limited ability to speak English. The terms “majority” or “non-minority” refers to non-Hispanic white persons. Ethnicity refers to an affiliation based on common national, tribal, religious, linguistic or cultural origins and backgrounds. Race refers to those groups (often identified by “color” or geographic origin) into which people in this society are classified by virtue of certain physical characteristics and/or culturally perceived commonalities.

“Black” and “African-American” are used interchangeably, although the Commission recognizes that immigrants or visitors from Africa, the Caribbean, or other places may be considered “black” but not American.

“White” and “Caucasian” are also used interchangeably to refer to non-Hispanic persons most commonly of European origin,

although the Commission is aware that many Hispanics and others who fall within the definition of "minority" may be considered "white."

"Hispanic" is used in this report to include persons, regardless of race, with origins in countries which predominately speak Spanish or Portuguese, including but not limited to those who consider themselves Latino or Latina, Chicano or Chicana, Mexican-American, Mexican, Cuban or Puerto Rican.

"Asian" refers to Asians, Asian-Americans and Pacific Islanders, including but not limited to those whose origins are Cambodian, Chinese, Filipino, Japanese, Korean, Laotian, Hmong, Malay, Indian, Pakistani, Samoan, or Vietnamese.

"Native American" refers to persons having origins in North America and who maintain cultural identification through tribal affiliation or community recognition.

In the 1990 census, the population of Georgia was twenty-seven percent African-American, 1.2% Asian and 1.7% Hispanic. In eighteen of the 159 counties, fifty percent or more of the population is African-American. There has been a significant increase from 1980 to 1990 in the number of persons of Asian and Hispanic origins in Georgia. This is probably due in part to the state's physical location, bordering the state of Florida. In 1990, Florida was the state with the third largest number of foreign-born residents and was fourth in the number of immigrants in fiscal year 1992 as reported by the Immigration and Naturalization Service. Twenty-two Georgia counties had a 1990 immigrant population of three percent or more. These counties include several large urban communities, some traditional areas where migrant labor has been employed, and several counties in which military bases are located. While the general population of the state increased 18.6% from 1980 to 1990, the minority population increased by 24.9%.

Similar trends have been identified for the nation as a whole. Based on the 1990 census demographers have estimated that the 1990-1994 immigration rate is the highest five-year rate since the turn of the century and that in 1995 minorities now equal one in five Americans (*American Demographics*/February 1995, pp. 26-27). At current rates of growth, it has been estimated that Hispanics will outnumber African-Americans within ten years. Further, the same source estimates that in 1995 one third of U.S. children under 18 are African-American, Hispanic, or Asian.

Section 2: General Findings

Judges play an important role in preventing bias. As the chief officials, they establish the tone of treatment of individuals within the courtroom and courthouse. Judges should ensure that biased behavior is excluded whether it consists of blatant, hostile, or vindictive statements about a person's race, color, heritage, national origin or culture; demeaning or patronizing remarks; or subtle references to unfavorable characteristics attributing a lack of intelligence, competency, or trustworthiness to whole groups of persons. They should be responsible for eliminating bias by officers, lawyers, parties, jurors and all others who enter their courtroom. Everyone in the judiciary, including all officers and personnel within the court system, should understand that they are responsible for maintaining an environment tolerant of differences which safeguards the dignity of every person.

Bias is a preference or inclination that inhibits impartial judgment. Bias includes intentional or unintentional acts or attitudes resulting from either individual or group actions. Specifically, systemic or institutional bias differs from individual bias or prejudice. Institutional bias exists when one group uses its power to put its collective prejudices or inclinations into effect and to establish these as the norms for the entire system. Based upon the public hearings, other statements and evidence submitted, and its own research, the Commission determined that while some racial and ethnic bias may well exist in Georgia's court system, on balance the persons involved in the system and the system overall have made substantial efforts to be fair to all individuals, regardless of race, ethnicity or nationality, to provide a fair opportunity to be heard, and to protect individual rights in both civil and criminal processes.

Regrettably, the Commission concluded from all the evidence it considered that there are still areas within the state where members of minorities, whether racial or ethnic, do not receive equal treatment from the legal system. However, we also find that open and intentional bias occurs in isolated incidences, and usually results from actions of individuals in authority who personally have such prejudices and allow those prejudices to infiltrate the system. Passage of time and the exit from the system of such individuals with entrenched attitudes of bias will probably resolve some of these instances of individual prejudice. [On the other hand, persons who are objects of such prejudice

need to be informed of and make use of current options in the judicial system to remedy individual misbehavior.] By way of example, the Judicial Qualifications Commission is capable of dealing with allegations of bias which may relate to a particular judicial officer if appropriate complaint procedures are followed and proper evidence is presented. Other disciplinary systems exist for other actors in the system which will be discussed later in this report.

The Commission also noted that, more frequently than intentional acts, there are incidences of bias which appear to result from unintentional conduct or conduct resulting from a lack of awareness. A limited Courtwatch that the Commission undertook in 1994 showed no blatant acts of discrimination, but observers pointed out that they perceived some instances in which minorities may not have been accorded the same degree of courtesy and respect as majority race individuals. A common cause of this conduct appears to be a lack of education and training in how to deal with misconceptions and stereotypes along with a failure to extend common courtesies to each individual.

The various research the Commission has led the Commission to further conclude that the system is biased against economically disadvantaged individuals. A past president of the DeKalb Lawyers Association at one of the public hearings stated that having to rely on indigent defense or pro bono attorneys automatically places poor litigants, a large proportion of whom are minorities, at a disadvantage in the system as compared to those who can hire their own attorney. An assistant district attorney testified that poor people from impoverished backgrounds are more likely to end up in court, regardless of their skin color, noting that the problems lie not directly with race but rather with financial and social problems. A state representative also pointed out the intertwining of race and economics.

The following comments were received from the attitude surveys:

The real evil is not racial bias but lack of empowerment for the poor;

Poor people of little education are victims of bias;

This is also a class/money problem; i.e.—the better dressed, educated, and wealthier litigants are treated better by everyone in the court system.

Unfortunately, such bias more seriously affects minorities since they compose a greater portion of the economically and educationally disadvantaged. The following figures from tables in the *Georgia County Guide* (UGA, Cooperative Extension Service, 13th ed. 1994) help to illustrate this point. In 1989, 30% of blacks in Georgia had an income below the U.S. poverty level as compared to 9% of whites. The median household income for the same year for whites was \$16,944 while for blacks it was only \$9446. Almost 10% of blacks were unemployed in 1993 as compared to slightly over 4% of whites. There were three times as many black as opposed to white recipients of Aid to Families with Dependent Children funds in 1993. Other statistics about educational levels compiled in the *Georgia County Guide* show that 41% of Georgians not completing high school in 1990 were black as compared to 25% white. Seven and a half percent of black Georgians have four-year college degrees while 14.6% of whites have such degrees. Three and one-half percent of black and 7.2% of white Georgians have graduate or professional degrees. Because of this connection, some of the recommendations in this report seek to address the impact of economic disadvantage in the justice system on minority citizens.

II. ATTITUDES AND AWARENESS

Freedom is an indivisible word. If we want to enjoy it, and fight for it, we must be prepared to extend it to everyone, whether they are rich or poor, whether they agree with us or not, no matter what their race or the color of their skin.

Wendell Lewis Wilkie, *One World*, ch. 13.

Section 1: Attitudes Toward the Judicial System

National surveys of the public report that minorities and women see a totally different justice system than non-minority males. For example, one conducted in 1992 by *U.S. Today* found 81% of blacks believed the criminal justice system was racially biased; only 36% of whites held the same view. A similar 1993 survey by the Anti-Defamation League showed that 65% of blacks felt courts tend to discriminate against them, while 25% said courts are fair to defendants of all races. In contrast, 58% of whites said the judicial system operates without bias and only 28% said that it treats blacks unfairly. Results from the

December 1993 *Gallup Poll* which queried the public about the criminal justice system found that over 74% of black respondents felt blacks were treated more harshly than whites; 35% of whites agreed. Only 24% of blacks felt they were treated equally with whites, while 57% of whites believed there was equal treatment.

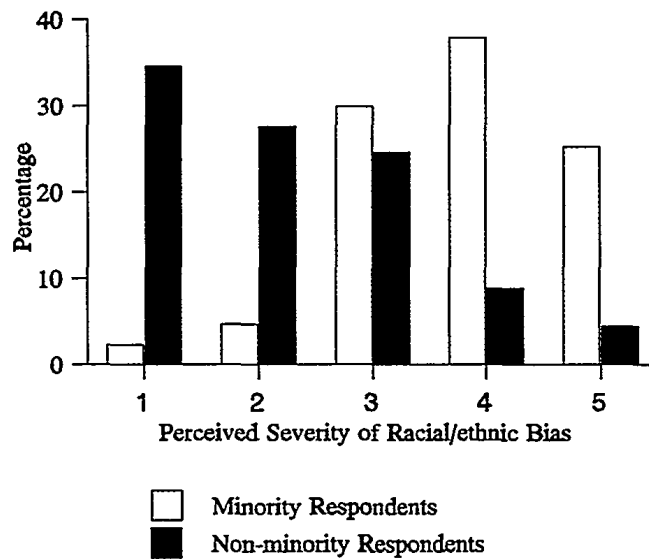
A Georgia survey conducted by the Georgia State University Applied Research Center of 805 Georgians in March 1995 (reported in the *Atlanta Constitution* newspaper) shows a gradual increase in positive attitudes about race relations. For minorities, however, it was noted there was both more suspicion of the justice system than for whites and a less positive view of the economic progress of African-Americans.

Testimony from the Commission's public hearings identified a significant discrepancy between the views of the court system's judges and clerks, who generally believe that racial and ethnic bias is almost non-existent, and public witnesses, who believe that significant bias continues to be a serious problem for the court system. For example, a staff attorney with the NAACP Legal Defense and Education Fund testified that minorities believe that they are not going to receive justice and that they will be treated unfairly because of their race and because of being poor. A minister felt that, whether perceived or real, bias and injustice lead to the erosion of respect for the court system; a director of a community crime prevention organization stated that bias, whether subtle or overt, "erodes the spirit of the community and affects the ability of the victims of that bias to be users of the court system."

The attitudes of attorneys, as illustrated by the Commission's survey, were generally divided along racial lines. Most minority attorneys believe that racial and ethnic bias exists (91%) and is problematic, while non-minority attorneys (54%) believe that such a problem does not exist. The following figures illustrate the difference in perceptions held by the minority and non-minority lawyers, who were asked to rate on a scale of 1 to 5 their perceptions of how severe and how widespread they believe bias is in the Georgia court system. In terms of the severity of the problem, a rating of 1 corresponds to the perception that racial and ethnic bias is a minor problem, while a rating of 5 corresponds to the belief that bias is a critical problem. In terms of how widespread the problem is, a rating of 1 corresponds to the opinion that racial and ethnic bias occurs in isolated incidents, whereas a rating of 5 is associated with the perception

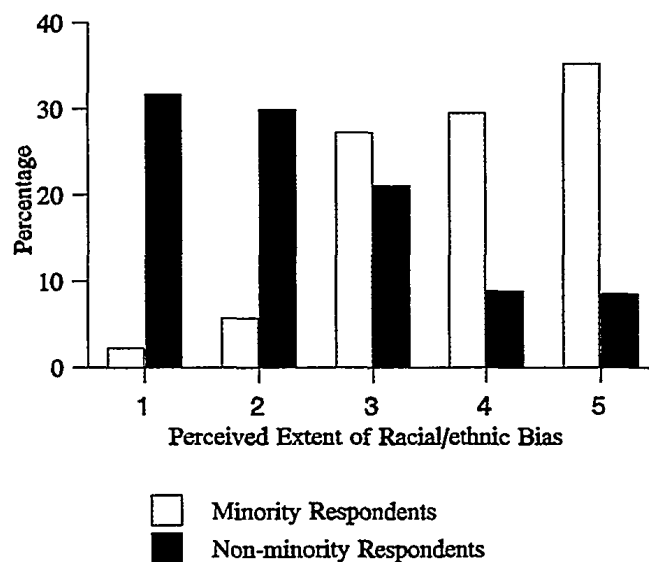
that bias is pervasive throughout the entire system. As can be seen, minority attorneys generally considered bias to be more severe than did non-minority lawyers.

Severity of Bias



Minority attorneys similarly viewed racial and ethnic bias as being much more widespread than did non-minority attorneys, as can be seen below.

Extent of Bias



Over 40% of superior, state and juvenile court judges believe bias exists; only about 20 to 25% probate and magistrate court judges have that view. Because there are so few minority judges as compared to the total number of judges in each class of court, the minority opinion is difficult to assess from these surveys. Generally, the majority of judges felt that bias occurred as isolated incidents.

The questions on the survey did evoke a variety of strong feelings, as evidenced by the following sample of responses. The Commission realizes that some of these comments may contain offensive language (and the Commission thinks they are necessary), but they are quoted directly from the survey responses to illustrate the full gamut of attitudes.

Majority Female: "Experiences vary from court and county but minority litigants definitely receive less favorable treatment from judges, bailiffs, and attorneys."

Majority Male: "... I believe minority attorneys receive greater courtesy, respect, cooperation and substantive decisions from judges and lawyers than I do because they are minority lawyers and no other reason."

Minority Male: "... the perception is that one needs a lawyer who is already 'in the club' in order to obtain adequate representation."

Majority Male: "... Some minority female attorneys seek special treatment as compensation for the apparent difficulty of their positions; some would not accept any difference of treatment."

Hispanic Male: "Racial bias in the Hispanic community comes from failure to properly communicate, and indifference in some courts."

Mutual respect is important to the adversarial process, yet 38% of minority attorneys and 24% of majority lawyers indicated that they were aware of instances of inappropriate comments, jokes, or racial or ethnic slurs. Witnesses testified that racial slurs and gratuitous references continue to be used on occasion in court proceedings and by representatives of the judicial system in public education contexts. (There were various allegations that court-appointed indigent defenders used racial slurs in reference to their clients, that jurors did so in deliberations, and that sheriff's deputies law-related education programs in schools had used derogatory racial comments.)

Comments of attorneys and judges from the attitude surveys also indicate similar incidents. A minority male attorney stated that the sheriff tells Klan jokes and makes racial comments, while another minority male reported overhearing “a Layperson describe their attorney as a ‘nigger’ but he’s a good attorney.” Judges generally reported such incidents occurred in their presence less frequently than attorneys did.

Further examples of both the responses of judges and attorneys are below:

Asian Male: Stated that a judge said “. . . ‘You speak good English.’ I am Asian and was born and raised in the U.S.”

Minority Male: “A black attorney practicing with two exceedingly short white attorneys were referred to as two midgets and a nigger.”

Majority Male: “Reference heard to ‘CPT’ = ‘Colored People’s Time,’ i.e., people of color are more often late.”

Minority Male: “A judge called a black attorney ‘BOY.’ When the court was asked to call the attorney by his name the court stated, that he meant nothing by it—he calls all of us ‘BOYS.’ ”

Majority Male: “Minority attorneys are almost always labeled as ‘black lawyer,’ etc.”

Majority Male: “Among white males, assumption is that all appreciate jokes or slurs—particularly in more rural communities.”

Minority Male: “Jokes told at legal seminars and by attorneys, judges and sheriff authorities during court recess.”

Hispanic Male: “. . . I have repeatedly heard attorneys and/or court personnel make such comments/jokes/slurs about non-attorney minorities.”

Minority Male: “I have heard one attorney, while in court, whisper to another that ‘Hitler had the right idea!’ in reference to another attorney of the Jewish faith.”

Majority Male: “. . . I myself have been referred to as a ‘honkey’ and/or a ‘cracker’ more than once but always considered them to be used in jest and took no offense thereto.”

Majority Male: “. . . I find it quite often the case that racist or prejudiced white people make an assumption that it will be acceptable to other white people if they make disparaging remarks about persons of color ‘in private,’ and they

generally don't hesitate to do so. I suspect, but I have no personal knowledge, that the same situation exists among minorities."

Based upon the findings above and other research, the Commission will present in the remainder of this report a series of recommendations.

FINDING:

During the course of the Commission's work, it became apparent that some of the solutions to identified problems and issues may not fall within the control of the Supreme Court, but will require the coordination of many different bodies within and associated with the judicial system. For example, it will not be within the power of the courts to provide the necessary funds to implement all the solutions without the assistance of both state and local legislative bodies. Many will require cooperation and actions of other independent entities, such as the law schools, bar associations, local government officials, law enforcement, and the legislature and Governor. It is the Commission's hope that this report will serve as a catalyst and guide for each of these entities to make the principles of the founders of our nation, of equality and justice, effective for all.

RECOMMENDATION:

1. The Commission requests that the Supreme Court establish an Implementation Committee to put into action the solutions proposed in this report and to coordinate with other associated bodies in effectuating these efforts toward the elimination of bias.

Section 2: Cultural Awareness and Sensitivity

Cultural diversity or sensitivity training refers to learning activities and exercises intended to enhance awareness of the impact of cultural environments on the lives and interaction of people including its impact on social structure, kinship systems, and personality. The Commission believes that, over a period of time, diversity and cultural awareness training could be incorporated into the court community's continuing education. If presented in a non-confrontational manner, it will help to reduce misperceptions by bringing different cultural groups together for open discussions. In the Commission's survey, over 50% of the minority respondents believed that a significant impact on racial

and ethnic bias in Georgia's court system could result from the incorporation of cultural diversity training into continuing judicial and attorney education. Although only 20% of non-minority attorneys felt training would yield significant results, another 40% felt a minor impact would occur.

RECOMMENDATIONS:

2. An Implementation Committee should be established which should coordinate with appropriate organizations and persons the accomplishment of the Commission's recommendations.

3. The Implementation Committee should work to devise settings in which judges and attorneys can be engaged with more culturally diverse audiences and groups. This might include programming that requires small group interaction between judges, attorneys, court personnel, and citizens, or as an alternative, require engaging in role play.

4. Cultural diversity training of court officers and employees at all levels is strongly encouraged. Although cultural mores can be discussed, diversity training faculty should be careful to avoid using such information to create rigid group stereotypes.

In light of the high priority that members of the Commission felt this recommendation deserves, the Commission in conjunction with the Gender Equality Commission explored immediate means of implementation. As a result, the *World of Difference* curriculum of the Anti-Defamation League was licensed for use in Georgia and with the assistance of the Institute of Continuing Judicial Education a faculty was trained in spring of 1995 to integrate components of this diversity curriculum into regular continuing education for judges and clerical personnel of the Georgia courts. Portions of this curriculum have already been utilized in training.

5. Judges, district attorneys, court clerks, other court personnel, and attorneys should actively enforce appropriate decorum in their respective offices and throughout the courtrooms and courthouses.

6. Information reflecting the concerns of minority citizens and professionals should be widely distributed. Sensitivity to such concerns should be heightened systematically and should be reflected in planning for professional events for both legal and judicial professions, and substantive coverage of such issues should be reflected in professional publications.

7. The State Bar Committee on Involvement of Women and Minorities in the Profession has prepared a "Court Conduct Handbook" pamphlet (a copy of which is included as Appendix C) which should continue to be widely circulated to new members of the bar and new employees of judicial and associated offices such as the district attorney, public defender, and clerk of court. Jury orientation materials prepared by court personnel should include information about the duty of a juror to make decisions based on the tenet of equal treatment regardless of any individual's gender, race or ethnic background or their ability to speak English.

III. DIVERSITY IN THE WORK FORCE

No poor, rural, weak, or black person should ever again have to bear the additional burden of being deprived of the opportunity for an education, a job, or simple justice.

Jimmy Carter, inaugural address as governor
January 12, 1971

The Commission's Employment Survey indicated that the proportion of racial and ethnic minority employees is small in most courthouses in the state. Witnesses at the public hearings testified that, particularly in the criminal justice system, it appears that the courts are administered by a very high percentage of Caucasian personnel while a high proportion of the defendants are from racial and ethnic minorities. For instance, the director of the Prison and Jail Project in Sumter County (an offender advocacy group) stated that in at least six of the seven counties that his group serves, all court officers are white except for two black probation officers; in contrast, at least 95% of criminal defendants in those counties are black. A black female magistrate characterized Georgia's justice system as "white judges, black defendants" justice administered by whites. She said that the way to change the system is to change the racial make-up of the decision makers. A state representative and practicing attorney stated at one of the hearings that minorities are not given the same benefit of the doubt that non-minorities are given because the court system is largely white and comes from a "different society" that has definite perceptions about minorities.

It is difficult for racial and ethnic minorities to perceive the system as fair when the judges, lawyers, and court personnel

they see do not reflect the different groups in the community. It creates an atmosphere of “us” versus “them.” The results of the survey of attorneys conducted by the Commission illustrated this point. Ninety-one percent of the responding minority attorneys believed there is bias. As previously shown, over 75% rated the severity of the perceived bias 3 or more on a scale of 1 to 5 (with 1 indicating isolated incidences of bias and 5 indicating pervasive bias throughout the system). When asked about possible recommendations which would have a significant effect on alleviating this bias, over 75% of the minority respondents felt that encouraging more employment of minorities throughout all levels of the court system would have a significant impact.

Comments from attorneys and judges as to the most significant change they could suggest included the following:

Minority Male: “A bench which reflects the diversity in the population and a diversity of the consumers of the judicial process.”

Non-minority Male: “The emphasis on increasing the number of minority judges, is, in my opinion, a positive trend.”

Majority Male: “Encourage participation and hiring of minority applicants in all aspects of the judicial system.”

Minority Female: “Increase the number of minority employees who make significant decisions regarding court calendars and cases.”

Having daily contact among people from diverse cultures and races can increase understanding of the problems and differences of all groups. Although there has been improvement in the diversity of the judiciary of the appellate courts and superior courts of the state in recent years, there still remains a dramatic difference in the number of minorities in the judiciary and the supervisory levels of the court system statewide as compared with the number of minorities in the general population.

Section 1: Judiciary

The 1990 U.S. Census showed the Georgia population to be 27% African-American. In each of the 159 counties, the African-American population ranged from 0% to 79%. The two largest ethnic groups were Hispanics with 1.7% (108,922 persons) and Asians 1.2% (75,781 persons). About half the Hispanic population of the state is Mexican, while the Asian Pacific population is

composed of many small groups of persons from a larger number of countries of origin. There were 16 counties in which Asians constitute greater than 1% of the population; 19 counties had populations greater than 2% Hispanic residents.

Historically, members of the judiciary who are also racial and ethnic minorities have been represented in inadequate numbers. The Commission collected available data about the current racial and ethnic composition of the judiciary and the work force of the courts. Information from the Administrative Office of the Courts and the Employment Surveys of the Commission showed that as of July 1, 1995, there were:

SUPREME COURT JUDGES	2 African-Americans (1 male, 1 female)
	5 Caucasians
COURT OF APPEALS JUDGES	1 African-American (male)
	8 Caucasians
SUPERIOR COURT JUDGES	14 African-Americans (9 males, 5 females—seven work in Fulton County and two in DeKalb County)
	1 Native American
	137 Caucasians
STATE COURT JUDGES	4 African-Americans (2 males, 2 females—two in Fulton County and one in DeKalb County)
	86 Caucasians
PROBATE COURT JUDGES	1 African-American (female)
	3 Native Americans
	155 Caucasians (two are of Hispanic origin)
JUVENILE COURT JUDGES	2 African-Americans (1 female in Fulton County, 1 male in DeKalb County)
	52 Caucasians
ASSOCIATE JUVENILE COURT JUDGES	2 African-Americans (both males in Fulton County)
	37 Caucasians (one of Hispanic origin)
MAGISTRATE COURT JUDGES	32 African-Americans (5 in Fulton County, and one in DeKalb County)
	1 Asian (male)
	1 Native American
	444 Caucasians (one is of Hispanic origin)

There were 986 total judges of which only 6% (58) were African-American; of these, 34 (3% of the total number of judges) worked outside Fulton and DeKalb Counties. There was one reported Asian judge, and four individuals responded that they were of Hispanic origin. Several persons categorized themselves as of Native American heritage.

FINDING:

The proportion of racial and ethnic minorities in Georgia's judiciary is far smaller than the proportion of minorities in the State's population.

This is true even though figures tabulated in 1995 by the ABA Task Force on Opportunities for Minorities (taken from *Directories of the Minority Judges of the United States of America*, compiled by Judge Benjamin Aranda, III, and Judge Arthur L. Burnett, Sr.) showed that Georgia ranks eighth in the number of minority judges among the fifty states and first among the southern states in the number of minority judges.

Complaints were received by the Commission alleging that racial and ethnic minority attorneys are often not fully aware of the formal and informal processes involved in both the application for judgeships and the selection of judges. The process of applying for available judgeships is not generally advertised. Because attorneys who are members of racial and ethnic minorities may not have access to the same information as non-minority attorneys and their bar associations, minority attorneys have less information about these processes, especially the appointive process. Often, persons representing bar associations responsible for providing evaluations of applicants for judgeships are not personally familiar with the minority attorneys who have applied for available judicial positions.

The Commission met with the Chairperson of the Judicial Nominating Commission (JNC) to discuss the process of application for a judicial appointment and the success of minority candidates. The JNC is established by executive order to provide a process to evaluate candidates for judicial appointment by the Governor based upon merit and ability. The current Governor's executive order does provide that the commission membership shall include at all times at least one woman and one black, Hispanic, Asian Pacific American, Native American, or Asian-American. We commend the Governor's wisdom in ensuring the representation of racial and ethnic minorities on the JNC. The

Commission agrees with the Chairperson and the judicial selection committees of the various bar associations that the JNC serves a valuable function. However, because it was created by executive order, the continued existence of this body and its representative membership composition is dependent on each successive Governor's favor.

During the Commission's discussion with the JNC Chairperson it was noted that in several instances of judicial openings, the number of minorities being nominated was relatively small in comparison to the number of minority attorneys in that community who may be qualified to fill the vacancies. The Chairperson noted that self-nomination versus nomination by another lawyer made no difference in the JNC's consideration of an applicant. The nominating commission members personally interview all applicants who have answered the JNC background and qualification questionnaire and listen to presentations by interested bar associations about these candidates.

The JNC provides notification to attorneys of open positions by direct mailing in all but the metro-Atlanta area vacancies. Because of the large number of attorneys practicing in the metropolitan area, notices are published in the *Fulton Daily Report* (the legal newspaper) and sent to the various professional associations. Despite these notification efforts, the Commission members believed on the basis of comments from minority lawyers, that members of minority groups (particularly in the metropolitan Atlanta area) often were not informed of the openings for judicial positions in a timely manner.

Comparing a list of African-American attorneys compiled by the Georgia Alliance of African-American Attorneys with the total active 1994 Georgia Bar membership, it appears that fewer than 900 of over 21,000 active State Bar members were African-American. Information from the report of Dr. Joseph L. Katz, prepared September 29, 1994, for the State of Georgia in the case of *State of Georgia v. Janet Reno*, No. 90-2065 (D. D.C. decided Feb. 3, 1995) in the U.S. District Court of the District of Columbia, showed that only 4.1% of the active members of the State Bar eligible for superior court appointment (*i.e.*, having the qualifications of seven years of law practice and residing in the circuit) are African-American. Sixty-two percent of these black attorneys are located in the Atlanta Judicial Circuit while over 87% are located in only six of the 46 circuits (Atlanta, Stone

Mountain, Eastern, Augusta, Macon, and Chattahoochee). In eight of the circuits, as of May 1994, there were no black attorneys eligible for a superior court judgeship; in several other circuits there were only one or two such eligible attorneys.

Georgia's selection system for appellate, superior, and state court judgeships is both an elective and appointive system. Non-partisan elections are held for full term replacements, but in the event of death, resignation, or the creation of a new judgeship position, vacancies are filled by appointment of the Governor from a list of candidates submitted by the JNC. The benches of the other limited jurisdiction courts are variously filled by election or appointment. Sixty-six percent of all superior court judgeships filled between 1968 and May 15, 1994, Dr. Katz determined, were initially appointments. Seventy-nine percent of black superior court judges were appointed. Of 214 appointments between March 1972 and April 1994 to the superior court, state court and appellate court benches, 24 (11%) have been African-American. In contested elections since 1968, African-Americans won 14 and whites won 10 races, though most of these were either for statewide judicial office or for the Atlanta Judicial Circuit.

Information compiled by the American Judicature Society shows that there is no clear majority in how states select appellate and general jurisdiction judges. Approximately 44% of the states hold elections for appellate positions and 60% do so for general trial jurisdiction judicial offices. In most of the remainder, appointment is by the governor or with participation of a merit selection or nominating commission. Studies suggest that the method by which initial judicial selection is conducted has little effect on the number of minorities on the bench as contrasted with the method used to fill vacancies from resignations, death, and retirements are filled (from *Judicature*, May-June 1994 Vol. 77 No. 6 p. 316, "How minority judges fare in retention elections," p. 319).

The issue of the method of judicial selection in Georgia has been the subject of litigation for over five years. In February of 1995, the U. S. District Court of the District of Columbia held in *State v. Reno* that the statutes creating superior court judgeships since November 1, 1964 do not violate Section 5 of the Voting Rights Act of 1965 by discriminating on the basis of race or color. An appeal of this decision is still possible while the related Brooks case may yet come to trial. Therefore, currently, it

appears that the issues over how Georgia judges will be selected is not fully resolved; thus, this Commission will not comment on the most desirable and fair method of selecting judges.

Based on the current composition of the judiciary, however, it is clear that African-Americans should be encouraged to enter the legal field and should be urged to pursue careers in the judicial branch. Six percent of attorneys and judges are not sufficient when the population over 18 years of age is 25% African-American and 2% other racial and ethnic minorities. The situation becomes even more poignant considering the disproportionately large number of minorities appearing as parties in our court system every day.

RECOMMENDATIONS:

1. *The procedure used by the State of Georgia to select all judges, both elective and appointive, should continue to be evaluated in its entirety, and if the procedure (in part or in whole) is found to be discriminatory, systematic efforts should be made to reduce the discriminatory aspects of the procedure.*
2. *The entire process, with particular emphasis on the appointive process, should be open and explained, including how the Judicial Nominating Commission evaluates candidates, how it receives and evaluates input from bar associations, and how bar associations arrive at their recommendations to the JNC regarding judicial applicants.*
3. *The State Bar of Georgia and other bar associations should be encouraged to give seminars on a regular basis regarding the process of how to become a judge. Such seminars should help participants learn how to develop and demonstrate qualifications for the judiciary; cover judicial ethics; explain bar evaluation procedures; and provide information on the electoral or appointment process for each level of court, including information on laws related to public disclosure and candidacy.*
4. *To ensure the continued existence and function of the Judicial Nominating Commission, the Implementation Committee should suggest that the JNC be a permanent body. Appropriate provisions should be made to ensure that racial and ethnic minorities are adequately represented on the JNC, using the demographics of the state's population as a guide.*
5. *All judicial candidates should be able to demonstrate sensitivity to and respect for persons of all racial and ethnic backgrounds. In evaluating judicial applicants, the Judicial*

Nominating Committee and the bar associations that have input into selecting judges and reviewing judicial applicants should be aware that the racial and ethnic diversity of applicants and the bench is a strength. Demonstrated sensitivity to and respect for persons from all racial and ethnic backgrounds should be a consideration in determining whether an applicant is qualified for a judicial position.

6. Persons who are members of racial and ethnic minorities should be encouraged to run for the judiciary and to apply for open judicial positions. Minority bar associations and mentors for minority lawyers should also urge minority attorneys to apply for these positions. Self-nominations should also be promoted. Minority attorneys should be encouraged and supported in starting practices in regions where there are large minority communities outside of the major urban areas of the state. Minority lawyers should be encouraged to take a more active role in State Bar Association committee activities and to seek positions of responsibility with these organizations.

7. Correspondingly, the State Bar should promote minority participation in bar activities and encourage minorities to serve as officers. This interaction would be healthy in that it would foster better communication among minority and non-minority lawyers and would also facilitate the exchange of information concerning the qualifications of minority attorneys who may seek judicial positions.

8. The Judicial Nominating Committee should continue to advertise judicial openings extensively, and should send a flier or postcard to each member of the State Bar who resides in the judicial district where a judicial opening is located, as well as to all local bar and professional associations. The JNC should publish its procedures in a pamphlet or flier to be distributed to all members of the State Bar of Georgia. This pamphlet should also be available for public access. To ensure fairness in assessing the input of the bar associations, the JNC should require that the information it receives from the various associations be given to the JNC in a uniform manner, using the same or similar criteria for the ranking of applicants.

9. To ensure that all attorneys who apply but are not selected for judicial openings are not discouraged from reapplying at a later date, those who received favorable reviews from bar associations and the Judicial Nominating Committee should receive some type of feedback if requested by the applicant.

10. *The informal process should be identified, evaluated, and explored by the Implementation Committee so that it is fully open to all members of the Bar. Examples of how the Implementation Committee might accomplish this could include interviewing judges and judicial candidates and/or creating profiles of judicial candidates to identify pertinent factors of successful candidates.*

11. *Regarding persons selected to serve as judges of special courts, such as magistrates, municipal or county recorders court judges, juvenile court judges, and administrative law judges, the various appointing or designating authorities throughout the state are requested to observe the same values relating to racial and ethnic diversity as that recommended for the Judicial Nominating Committee.*

Section 2: Associated Agencies

Other state and local government agencies (such as law enforcement, bailiffs, process servers, child support recovery, child protective services and supervision for both adult criminal offenders and juveniles) perform services closely related to the courts. Testimony at the public hearings indicated that the public often identifies local or regional employees of these executive branch agencies as court personnel. Therefore, it should be a concern of the local courts that these associated agencies hire employees that reflect the diversity of people in the community and their cultures. The Commission solicited and received information from several of these state agencies and the State Merit System.

FINDING:

Sources show that agencies associated with the courts, although not a part of the judicial system, generally have better representation of African-American employees than do judicial agencies as a whole.

For instance, the Georgia Peace Officer Standards and Training Council reported that of the 10,437 corrections officers on record in January 1995, 40% were African-American; of the peace officers on their rolls, about 30% were African-American. There were also about 125 Hispanic, 23 Asian, and 17 Native American peace officers on their lists.

State Merit System figures from selected agencies as of December 31, 1994, indicate that:

1. The **Department of Corrections** had about 36% African-American employees, with about two times the number of black males as females. African-Americans composed at least 20% of the employees in each classification except “skilled crafts” and “administrators.”

2. The **Board of Pardons and Paroles** had about 22% African-American employees with two times as many females as males; however, they composed less than 12% of both administrators and para-professionals.

3. The **Department of Human Resources** had about 50% African-Americans with over two-thirds females to less than one-third males. Statistics for the following divisions (which may generally be considered to have the most frequent contact with the court system) indicate that:

A. **Division of Family and Children Services** employees were 29% African-American, with six times as many African-American females as males. Nineteen percent of administrators are African-American.

B. The **Division of Mental Health, Mental Retardation and Substance Abuse**, including both hospital and other staff, was 59% African-American (with two and one-half times more females than males). Only 8% of the administrators/officials were African-American. About 2.5% of the employees were of other racial and ethnic categories.

C. At the **Office of Child Support Enforcement**, 27% of the administrators/officials and professionals were African-American while 33% of the office/clerical staff were African-American.

4. African-Americans composed 58% of the permanent positions in the **Department of Children and Youth Services**, but as in the other departments the percentage in the highest pay grades were significantly lower (14%).

Other racial and ethnic minorities composed from 1 to 2% of each department's employees.

Section 3: Judicial Branch Employees

State Services and Superior and State Courts

Regarding the state judicial branch, those agencies whose payrolls are administered by the Administrative Office of the

Courts (which includes the regional District Court Administrators, Georgia Indigent Defense Council, Council of Juvenile Court Judges, Judicial Qualifications Commission, and Board of Court Reporting) had a smaller minority representation (17% African-American work force with 3% of other ethnic backgrounds) than court associated executive branch departments. The information from the Employment Survey (designed by the Commission staff and completed in 1994 with the help of the District Court Administrators), indicated that the racial distribution of non-judicial superior and state court personnel statewide was also not as diversified as the executive branch agencies. Overall there were 14% African-Americans and less than 1% other ethnicities or races. In part-time positions in these courts (largely in the state courts), only 9% were African-American. The largest percentage of African-Americans in these two courts were in non-supervisory staff positions, which included investigators, bailiffs, probation officers, child support, and victim witness positions as opposed to chief clerks of court, legal, or supervisory positions. Only 1.1% of black males and 2.3% of black females held managerial/professional positions, which included legal or supervisory positions. The 159 Superior Court Clerks included only one female and one male African-American. There are no black district attorneys or county-paid local court administrators. There was one African-American regional or district court administrator. Only 3% of the official court reporters out of 186 reported were identified as African-Americans.

The following table displays the racial and ethnic distribution of both female and male personnel in Georgia's appellate, superior, and state courts (including judicial as well as non-judicial officers). Female employees represented 69.4% of the workforce while 30.6% were male employees. For each racial and ethnic group, women comprised a greater proportion of the work force than did men.

Gender	Race/Ethnicity										Total	
	White		Black		Asian		Multiracial		Hispanic			
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Female	2491	58.2	454	10.7	4	0.1	9	0.2	10	0.2	2958	69.4
Male	1163	27.3	133	3.1			4	0.1	4	0.1	1304	30.6
Total	3644	85.5	587	13.8	4	0.1	13	0.3	14	0.3	4262	100.0

Note: Figures are aggregates of superior and state court personnel included in the Employment Survey (as of September 1994) as well as the personnel of the appellate courts (the data for which was collected in April 1995).

A closer inspection of the Employment Survey results indicated that racial/ethnic and gender composition varies with different types of jobs. In order to emphasize such differences, employment positions were categorized into the following four groups:

- 1) **Judges/attorneys:** all judges, district attorneys, assistant district attorneys, public defenders, assistant public defenders, solicitors, assistant solicitors, law clerks.
- 2) **Supervisory positions:** court administrators, court clerks, all "coordinators" and "directors," and all staff positions specifically noted as having supervisory responsibilities.
- 3) **Staff positions, not supervisory:** all staff positions *not* designated as having supervisory responsibilities, investigators, bailiffs, probation officers, child support, and victim witness.
- 4) **Staff positions, clerical/secretarial:** all staff positions specifically noted as clerical/ secretarial, administrative assistants, calendar clerks, court reporters/transcribers, probation clerks.

The following table presents the percentage of individuals in African-American versus Caucasian and gender group whose jobs fell in these categories. Fifty-two percent of all white male full-time employees were in the "judges/attorneys" category. For all other groups, most individuals fall in the non-supervisory and clerical/secretarial staff categories. Regardless of race, significant proportions of female employees were clerical/secretarial.

Similar results were seen among the part-time employees. There were no black male or female employees in the judges/attorneys classification. It should be noted that bailiffs represented nearly all of the non-supervisory part-time positions.

Race and gender group	Total	Percent in each type of position			
		Judges/attorneys	Supervisory positions	Staff positions, not supervisory	Staff positions, clerical/secretarial
Full-time Employees					
Black Females	439	9.1	13.7	38.7	38.5
Black Males	120	25.0	13.3	50.0	11.7
White Females	2340	10.2	19.4	28.3	42.1
White Males	993	52.0	12.6	31.2	4.2
Part-time Employees					
Black Females	15		6.7	53.3	40.0
Black Males	13			100.0	
White Females	141	7.8	5.0	48.2	39.0
White Males	170	45.3	1.2	52.4	1.2

Note: Figures are aggregates of superior and state court personnel included in the Employment Survey (as of September 1994) as well as the personnel of the appellate courts (the data for which was collected in April 1995).

Appellate Courts

The Supreme Court, as of April 1995, had 57 positions other than the justices. Of these seven (12%) were held by African-Americans. There was only one African-American male. About one-half of the positions are secretarial, clerical, or editorial staff, which were held mostly by females. Twenty-six of the 57 positions could be classified as professional or supervisory, two of which were held by African-Americans.

The Court of Appeals, as of May 30, 1995, also had 57 permanent positions other than the judges. Of these, six (11%) were held by African-Americans, all of whom were females. As with the Supreme Court, secretarial and clerical staff were mostly female. About 35% of all the employees were female. There were three African-American professionals.

Other Trial Courts

From the other classes of trial courts, only partial data were received from a mailed survey sent by the Commission. For the 81 counties returning information on employees in Magistrate Court (which is a limited jurisdiction court in which most of the support staff are clerical employees and constables), 15% of the workforce was reported as African-American. There was only one Hispanic employee.

Juvenile Court surveys were returned from 34 of 56 courts with independent juvenile court judges. Nineteen and one-half percent of the supervisory employees and 37% of the non-supervisory employees were African-American. Two of the non-supervisory employees were Hispanic. These percentages are considerably larger than those of the other classes of courts. But again, as was noted from the data on the judiciary, most of the African-American employees were located in DeKalb and Fulton County courts. Not including these two courts, African-Americans represented only 8% of supervisory and 12% of non-supervisory employees. (Please refer to Appendix B for a brief description of these surveys.)

Section 4: Encouragement of Minorities Into Legal, Judicial, and Other Judicial System Careers

Differences in employment rates of minorities and non-minorities within the court system may be as much a result of the lack of qualifications, experience, or access to the employment process as acts of discrimination. The number of minorities in legal judicial and other judicial system careers cannot be increased without the open application process and positive working environments. Therefore, in order to increase the differentially small number of minorities in the court work force, steps must be taken to increase the educational qualification of minorities, foster experience building systems and increase the openness of the recruitment process.

Although there was little evidence of direct and intentional discrimination by individuals, a few instances of unnecessary references to racial and ethnic remarks were reported to the Commission. One, reported by one of the Deans of the Law Schools, related to inappropriate employment interview questions by a judge from another state; a second involved interagency employee relations reported at one of the Commission's public hearings.

RECOMMENDATIONS:

12. *All classes of courts should encourage the increased hiring of African-Americans throughout all employment levels.*
13. *All employers within the judicial system and associated agencies should be strongly encouraged to increase the diversity of their staffs by utilizing qualified employees from racial and ethnic minority groups and by creating positive*

employment environments for their present minority employees. Performance evaluations for these employers should be based in part on their ability to increase the diversity of their staffs. Incumbent elected and appointed officials should also be encouraged to diversify their staffs.

This recommendation can be further achieved by advertising open positions in media commonly seen or heard by the minority community, by putting non-discrimination statements in advertisements for positions, by advising new employees of policies and complaint procedures, and by establishing reporting procedures for complaints which ensure that the chief supervisor of an employee receives notice of any bias complaints. Other ideas include encouraging participation by minority attorneys in indigent defense appointments as well as in civil appointments (such as, guardianships) and seeking minorities to become involved in volunteer programs such as the Court Appointed Special Advocate program for children. A pamphlet, such as the one prepared by the State of New Jersey, which advertises the volunteer programs associated with or coordinated by the courts might be considered.

14. All judges, attorneys, and court personnel in the position of making hiring decisions should not make any references to race, ethnicity, religion, or other such factors when interviewing job applicants. Nor should applicants be treated differentially based upon race, ethnicity or religion in the application process.

Although ethnic minorities generally composed only 1 to 2% of most Georgia communities in 1990, the population size in a few counties translates these small percentages into several thousand residents. For instance, some of these counties are: Cobb (with about 9,000 Hispanics), Colquitt (1,600), DeKalb (16,000), Gwinnett (8,000), Hall (5,000), Tift (1,200), and Whitfield (2,300). Counties with a large number of Asians include: Chatham (2,400), Clarke (2,200), Clayton (5,000), DeKalb (16,000), Gwinnett (10,000), Habersham (1,500) and Richmond (3,000). Being bilingual should be seen as a favorable quality in job applicants in these counties. Bilingual employees taking on additional responsibilities as a result of their language skills should be compensated either monetarily or through reduction in other duties. Potential employees should be made aware of this compensation when interviewing for the position.

FINDING:

The number of attorneys which are of Hispanic, Asian, and other ethnic backgrounds who understand and can communicate in the language of many of the new immigrants to our state is very small, and most practice in the Atlanta metropolitan area.

Although no complete listing of Hispanic or Asian lawyers exists around the state, the Latin American Association and the Georgia Chapter of the National Association of Asian Pacific Attorneys helped the Commission identify these lawyers. Information from the African-American minority bar associations also was not complete or current.

RECOMMENDATIONS:

15. All classes of courts should encourage recruitment of minority employees in counties having significant ethnic communities, such as Hispanics and Asians. For those counties, the courts should also seek bilingual employees wherever possible.

*16. The minority bar associations and the State Bar should cooperate to identify and maintain an accurate, comprehensive list of minority attorneys which would include both African-American members and those of all **prominent ethnic groups**.*

The number of minorities enrolled in U.S. ABA-approved law schools in the 1993-1994 year was 18% with approximately 7% African-Americans (from the *ABA Review of Legal Education in the United States*, 1993). Since the 1977-1978 academic year, enrollment for black Americans has risen about 75%, from 5304 to 9156 persons. Hispanic and Asian enrollment, although smaller than black enrollment, has increased by more than 150% nationally. The following table shows the enrollment and degree figures for minorities at the four ABA accredited Georgia law schools for the 1993-1994 term.

Law School	Number of Minorities		Percent of Total	
	Enrolled	JD Degrees Awarded	Enrolled	JD Degrees Awarded
Emory University	118	19	17%	8%
Georgia State University	129	7	21%	9%
Mercer University	68	10	17%	7%
University of Georgia	64	11	10%	5%

Information about African-American enrollment alone was not available from each school for the same year. The increase in minority enrollment in law schools is encouraging, but information from the State Bar Admissions Office indicates that only about 4 to 6% of recent bar admissions are African-American. Unless the number of African-Americans graduating and being admitted to the Bar increases, then it is likely that the number of African-Americans participating in the Georgia court system as counsel, prosecutors, public defenders, law clerks, and judges will not change substantially. Although representation does not have to be handled by a person of the same race as the party, the lack of a significant number of persons of an individual's race or ethnic background allows the perception of exclusion, mistreatment or mistrust of our system to grow. Therefore, a closer reflection of our total community would possibly increase trust in the institution of the courts.

The Commission also studied the State Bar's Survey, *The Effect of Gender and Race on the Practice of Law in Georgia*, which was conducted in 1989. Among many questions asked, was what factors influenced an individual member to enter the legal profession. About 50% of all attorneys were motivated by intellectual interest in the profession, but the factor rated second by non-minority individuals was "a friend's or family member's being a lawyer," while minorities listed the "other" choice as the second factor. This seems to suggest the need for more role models in the legal profession for minorities and early encouragement to choose a legal career. Over one-third of the minorities in this survey reported having to overcome a general lack of encouragement to become lawyers as compared to white males, of which 11% responded similarly. Additionally, 69% of minorities versus 49% of whites responded that they had to overcome financial difficulties.

As a result of this information, the Commission decided to hold a forum with the Deans of Georgia's four ABA accredited law schools to discuss the number of minorities admitted to school, their success rate, and efforts made to both increase the number attending law school and completing the degree. Further, discussion concerned determining how to ensure successful passage into permanent employment.

The Deans noted that despite advances in terms of the number of entering minority students in recent years, the number of African-American students taking the required entrance examination for law school (LSAT) is still very small (5%) and is increasing at a rate slower than that of white women, Asians, and Hispanics. It was further noted that there has been a decline in the number of black males attending college overall. The percent of blacks 25 years old or older in Georgia with bachelor's degrees is 7.5% as compared to 14.6% of whites.

PROBLEM STATEMENT:

The number of minorities entering and completing law school remains relatively small. The small pool of minorities entering legal careers means that the pool of qualified minority attorneys and judges will also remain relatively small.

The Deans commented that in recent years the quality of minority academic credentials has improved. Each of these four schools now admits at least 10% minorities. Georgia State University has been particularly successful in recruiting minority students (probably in part a result of its student body being composed of many students employed while attending school). Each of the schools has some financial aid and support programs for first year students (which although available to all students, were also designed particularly to assist minorities to succeed). The most innovative of these programs was an arrangement by Emory with the President of Morehouse and Spelman Colleges (two predominantly African-American institutions) to designate a presidential scholar who receives a full tuition waiver to law school for all three years.

RECOMMENDATIONS:

17. The law schools should be encouraged to continue in their efforts of recruiting and supporting minority students. The law schools should also be urged to increase efforts at developing innovative programs such as Emory's Presidential

Scholar connections with Atlanta University colleges. The Implementation Committee should provide any assistance it can.

18. *The Implementation Committee should see that efforts are made at encouraging minority students, both at the college as well as high school level, to pursue legal careers. In addition to supporting the development of programs designed to get minority students interested in law, the Implementation Committee should strongly encourage majority and minority bar associations to take an active role in participating in these programs. Career days and the State Bar's high school moot court competition are both excellent examples of ways of reaching high school students. The Law Related Education Consortium continues to be instrumental in getting students interested in legal careers.*

All of the Deans emphasized the importance of an open and supportive school environment for all students. For minority students, who may have few close role models, this support may be particularly important to success. The Deans suggested that having minority faculty members and minority mentors for students can not only have a positive impact on the success of minority students, but can also create an open, diverse, and more bias free environment for all students.

A second need identified by the Deans in creating a positive learning atmosphere was the inclusion of opportunities for open discussion of issues of cultural diversity and equality.

RECOMMENDATIONS:

19. *The law schools should be encouraged to continue active recruitment and employment of minority faculty members. All faculty should be encouraged to be active role models on issues concerning racial and ethnic fairness and to study cultural diversity issues.*

20. *The Implementation Committee should strongly encourage minority bar associations (such as the Georgia Alliance of African-American Attorneys, the Gate City Bar, the DeKalb Lawyers Association, and the Port City Bar Association) to develop closer ties with law schools, urging them to actively participate in and support the schools and their programs.*

The Implementation Committee, in cooperation with the bar associations, should also strongly impress upon all attorneys the

importance of becoming mentors for minority law students. The Commission supports the efforts of the State Bar in the mentoring program they have established for new attorneys, and recommends that these efforts be continued. Other bar associations should institute similar programs.

21. In order to create an open law school environment for all students, the schools should be urged to make courses including cultural diversity issues a part of their curricula. Most particularly, the law schools should incorporate discussion of racial and ethnic fairness issues in professionalism and ethics courses and in scholarly debates, writings and programs in such a manner as to allow open discussion.

From the public hearings and forums there also appears to be a perception that, for whatever reason, minorities do not fare as well in terms of passing the State Bar Exam. Therefore, the Commission collected information about the examination process. First, the Commission inquired as to the composition of the Board of Bar Examiners who are selected annually. The 1995 board of five members has one African-American female and four Caucasian males. The Commission was encouraged that minorities were represented on the current membership and supports continued diversity of the board to assure a fair examination for all prospective Georgia bar members.

The Commission investigated complaints about the requirement that, before sitting for the Bar Exam, students who attended foreign undergraduate schools must pass separate competency exams even after graduation from an accredited Georgia law school. This requirement, which seemed unduly burdensome upon foreign students and, unnecessary since the student's competency had already been reviewed in the law school acceptance process was changed by an amendment to bar admission rules during the progress of the Commission's work.

The Commission was unable to evaluate other complaints about the law school and bar examination process since neither the law schools nor the Board of Bar Examiners maintain adequate information tracking minorities through school. However, beginning with the entering class of fall 1992, Georgia's ABA accredited law schools began participation in the National Bar Passage Study being conducted by the Law School Admissions Council. This prospective study will collect

information on students from the time they enter law school through taking the bar exam. The study should be completed by 1998 and will provide information on admission credentials, law school experiences, and performance on the bar exam.

RECOMMENDATIONS:

22. *The schools should annually prepare information about the number of minority admissions and successful graduates. This information should be reviewed each year by the Bar Admissions Office.*

23. *The Implementation Committee should carefully evaluate the outcome of the Bar Passage Study as soon as the information from Georgia's accredited law schools becomes available. If the results are positive (i.e., there is no disparity in terms of passage rates for minorities and non-minorities), then they should be publicized to help dispel the perceptions of disparity. If disparity is found to exist, then the appropriate steps should be taken to address the problems identified by the study.*

The Deans emphasized that the need for a mentor does not cease with a student's graduation from law school. Minority lawyers are valuable and positive role models to demonstrate to minority students that they can succeed not only in law school but as lawyers in the profession. The Deans of the law schools noted that participation in law school journals, competitions, and clinics tended to improve employment chances. Such participation, they commented, involves students with practicing attorneys creating networking and mentoring possibilities after graduation.

PROBLEM STATEMENT:

Minority students often do not have contacts to the professional legal community.

Minorities may be somewhat less likely to come from families with members who are attorneys. Furthermore, minorities may also be somewhat less likely to be in positions where networking opportunities, and therefore notice of job opportunities, would be readily available to them. Top-down networks (from judges/attorneys/court personnel in hiring positions to sources of minority applicants) have also typically been inadequate or lacking for minorities.

In terms of networking as relates to employment opportunities, minorities are often at a disadvantage. This may result in later or fewer job opportunities being offered to them or less profitable or responsible positions. In the Bar Survey of 1989, 85% of non-minority males had their first job offer within three months of law school graduation, but only 62% of minority women had received a job offer. About 5.5% more non-minority than minority lawyers obtained their first job following a summer clerkship or internship with a firm or legal organization.

The Bar Survey also showed that 51% of minority versus 72% of non-minority attorneys obtained their first job in private practice versus a government legal aid or other field, when private practice generally is considered to have the potential to be the most lucrative practice. A greater percentage of minorities started their own practice: 21% of minority men as compared to 13% of non-minority men, and 11% of minority women versus 10% of non-minority women. This trend continued over the full career of all attorneys surveyed; minorities composed 30% of solo practitioners as compared to 24% of non-minority practitioners.

RECOMMENDATIONS:

24. The Implementation Committee should encourage the establishment and maintenance of better networking availabilities. The Committee should urge law schools, majority and minority bar associations, and mentors to aggressively urge and support networking efforts on the part of minority students and young attorneys. The Implementation Committee should urge judges, attorneys, and court personnel in hiring positions to build better lines of communication with minority attorneys, minority bar associations, and law schools so that they may be better able to reach potential minority job candidates. The continuing legal and judicial education personnel should seek qualified minority faculty for continuing education courses for attorneys, judges, and other court employees.

Commendable efforts encouraging networking among minority and non-minority lawyers include: the Senior Attorney Mentor Program of the Younger Lawyers in Practice Committee of the State Bar, which provides a directory of senior attorneys willing to assist new attorneys in the practice; and the Georgia Minority Counsel Program sponsored by the State Bar and the Gate City Bar Association, which is a cooperation of law firms and

government agencies focused on increasing opportunities for minority attorneys in corporate and government legal work.

25. *The State Bar should consider more encouragement of students to join as student members and consider a means to have greater involvement of these student members with an emphasis on involving minorities in the activities of the younger lawyers committee projects as feasible.*

26. *Faculty and mentors should encourage participation by minority students in journals, moot court activities, and practical clinics and involvement in opportunities to meet or work with experienced members of the bar, such as through school forums or temporary clerkships.*

27. *Judges as well as attorneys, should be encouraged to diversify their professional affiliations and networks so as to include communities which have significant minority and ethnic populations. They should inspire members of these communities to consider careers in the judicial system as clerks, court administrators, lawyers, law clerks, and judges. Such affiliations should also improve acquaintances of judges with qualified minority applicants for judicial system employment.*

28. *All levels of courts should seek applications from qualified minority candidates for all positions in the judicial system, and should encourage county governments to require that notice of all job openings be advertised so as to reach potential minority applicants. Such notification could be accomplished through announcements in minority news media and by sending notice to various minority and ethnic organizations.*

Section 5: Complaints Alleging Behavior Evidencing Racial or Ethnic Bias

Although there is some information about complaints made about judges, there is little data available to evaluate the number of complaints or racial and ethnic bias system-wide and the outcome of such complaints concerning other court employers such as court administrators or clerks. The Commission collected data from the Judicial Qualifications Commission (JQC) about complaints against judges. Sixty-nine racially based complaints have been made since 1972 out of a total of 1,886 complaints filed. Sixty-five of these were found by the JQC to be without merit, while three resulted in a private reprimand and one

resulted in formal action against a judge. Eight of the sixty-nine complaints were filed against African-Americans. The director of JQC noted that minorities have filed complaints against minority judges.

Racial or ethnic bias represent a serious breach of professionalism and ethics. Since 1992, the JQC reports that there is an unwritten policy that any complaint filed on the basis of racial factors is treated very seriously and receives an automatic investigation letter. For every claim of racial bias recorded with the JQC, the judge against whom the claim is filed is notified and asked to respond.

The 1994 revision of the Code of Judicial Conduct included amendments to prohibit such behavior on the part of judges and places a duty on the judge to prohibit bias by persons under the judge's direction. First, the Code of Judicial Conduct Canon 2 ("Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.") Section C. prohibits judges from holding membership in any organization that practices invidious discrimination. Then in Canon 3 ("Judges Shall Perform the Duties of Judicial Office Impartially and Diligently.") Subsection B. (5) states that "Judges shall perform judicial duties without bias or prejudice. Judges shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judges's direction and control to do so."

The last portion of Canon 3, B. (5) places a further duty on the judge to prohibit bias by persons under the judge's direction and B. (6) extends this responsibility to controlling the conduct of attorneys in the courtroom. "B. (6) Judges should require lawyers in proceedings before the judge to refrain from manifesting, by words and conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. . . ."

PROBLEM STATEMENT:

Although the Code of Judicial Conduct contains specific Canons prohibiting racially biased actions on the part of judges, there are no similar provisions in the Georgia Code of Professional Responsibility for attorneys.

In the Commission's attorney survey, 78% of minority and 32% of non-minority respondents felt that an amendment to the Code would have a positive impact on the system. An anti-bias amendment to Rule 3-101 has been drafted by the Involvement of Women and Minorities in the Profession Committee of the State Bar, but has not been adopted. This proposal would create the following ethical consideration.

EC 1-10 As officers of the court, lawyers enjoy certain privileges and accept corresponding responsibilities. Lawyers should strive to avoid all behavior which tends to denigrate public respect and confidence in the legal system. The integrity of the system can be maintained only if lawyers avoid conduct which is prejudicial to the administration of justice, including certain discriminatory conduct committed by a lawyer while engaged in the practice of law. A lawyer should not engage in conduct that is prejudicial to the administration of justice, including conduct which would disparage, humiliate, or discriminate for any reason against litigants, jurors, witnesses, the judiciary, court personnel, or other lawyers on account of the following factors: race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. Such conduct subverts the administration of justice and undermines the public's confidence in our system of justice, as well as traditional notions of equality. Lawyers may consider such factors only when they are at issue in or otherwise relevant to the representation.

Our criminal justice system affords substantial discretion to the prosecutor's offices. Although this discretion is necessary, its breadth coupled with a lack of specific rules or a specific oversight body allow for the possibility of disparate treatment stemming from that discretion. Currently, Georgia has no special code of conduct specifically directed at prosecutors. A survey of states by the Commission determined that West Virginia and Iowa have separate disciplinary rules for prosecutors while Iowa is the only state that has a separate prosecutorial disciplinary body. Ratification of the proposed Anti-Bias Ethical Consideration amendment or a similar change to the State Bar Rules would restrict prosecutors as well as all other attorneys from engaging in prejudicial conduct.

Information received at the public hearings and particularly the forums with the ethnic communities also suggested that the

public is confused about where to refer complaints of bias against lawyers or judges. Furthermore, court personnel directly hired by judges or other court officials need to be aware of how complaints concerning racial or ethnic improprieties will be handled by the supervisor. Even these efforts to inform the employees of how complaints should be handled may be insufficient since many persons who work in or with the courts are employees of other elected officials or of the county government and, therefore, are not under the supervision of judicial system employers.

RECOMMENDATIONS:

29. *All court system personnel should be informed about the State Bar and the Judicial Qualifications Commission processes, so as to be able to inform members of the public who wish to file a complaint against a judge or attorney how to do so.*

30. *All court employers within each county should develop a policy for the reporting and handling of instances of racial and ethnic improprieties. Subject to the court's approval of that policy, it should be implemented immediately. All employees should be made aware of the policy and should be informed of their options for reporting instances of racial or ethnic bias.*

31. *The Implementation Committee should support the adoption of an amendment to the Code of Professional Responsibility to address biased behavior. An ethical consideration in a form similar to the proposal of the State Bar Committee on the Involvement of Women and Minorities in the Profession, should be considered.*

32. *In that the Supreme Court and the State Bar have created a Commission on Evaluation of Disciplinary Enforcement, the Implementation Committee should request that Commission to address the question of whether to develop and implement specific ethical code provisions for prosecutors as well as whether there is a need for a separate prosecutorial investigatory and disciplinary body.*

IV. ACCESS TO THE COURT SYSTEM: UNDERSTANDING
RESPONSIBILITIES AND RIGHTS WITHIN
THE JUDICIAL SYSTEM

Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful.

Justice John Marshall Harlan, 1896,
dissenting opinion, *Plessy v. Ferguson* 163
U.S. 537, 559.

Section 1: Immigrants and Ethnic Minorities in Georgia

Although Georgia does not yet have a large concentration of persons of other races and nationalities (e.g., Asian or Hispanic) as some of the other states (such as New York with 12% Hispanic and 4% Asian; California with 26% Hispanic and 10% Asian; and New Mexico with 38% Hispanic), the number of persons of races other than Caucasian and African-American becoming residents of Georgia has increased dramatically over the last two decades. According to the 1970 census, there were only 11,184 residents of other races; in 1980 there were 50,789; and finally the 1990 census reported 131,503 such residents (figures from *The Georgia County Guide*, 1994). Information from various sources indicate that about 3,100 refugees entered Georgia in 1994 from about thirteen countries, with the largest proportion (about 2,000) being Vietnamese. The project director of the Georgia Legal Services farmworker programs stated in a July 17, 1995 *Atlanta Journal Constitution* article that there were at the time at least 104,000 migrant workers in Georgia, a significant increase over the estimated 43,000 migrant workers in 1989.

Figures compiled by the U.S. Census also show that the Atlanta metropolitan area was at the top of the list of the twenty metropolitan areas with the largest percentage increase in Asian population during the decade from 1980 to 1990. During this decade, 40,000 Asians moved to the Atlanta area. About eighty percent of the Asian community are recent immigrants including people of Cambodian, Chinese, Filipino, Hmong, Indian, Japanese, Korean, Laotian, and Vietnamese descent speaking a dozen different languages and with different cultural and

religious backgrounds. The 1990 census showed about 74,000 Asian residents in Georgia with the four largest groups being Korean (15,275), Asian Indian (13,926), Chinese (12,657), and Vietnamese (7,801 persons). About 89% of the Asian and Pacific Islanders residing in Georgia at the time of the 1990 census lived in or near urban centers.

Persons of Hispanic origin comprise a slightly larger proportion of the ethnic community in Georgia. The 1990 census showed almost 109,000 persons of Hispanic origin residing in the state, with the largest proportions being Mexican (49,182), Puerto Rican (17,443), and Cuban (7,818). Estimates for 1994 indicated that the Hispanic immigrants in the Atlanta metropolitan area exceeded 137,000 residents. Approximately 31% of the Hispanic Georgia residents lived in rural areas of the state in 1990. It is now estimated that Georgia has over 248,000 immigrants (from information compiled by Georgia State University Center for Applied Research in Anthropology).

The Atlanta Regional Commission along with the Georgia State University Center for Applied Research in Anthropology has compiled a series of profiles of some of the ethnic communities in the metropolitan area. These profiles provide an excellent initial resource about the state's most recent residents by summarizing the size of each community, how long this population has been in Georgia, the culture, customs, and local resources.

Section 2: Basic Legal and Court Information

Many of the concerns brought to the attention of the Commission in the public hearings, the forums with ethnic community groups, and the attitude surveys included allegations that individuals of both racial and ethnic minorities typically do not understand court processes. This was argued as being disproportionately true of those with little education, inadequate economic resources, and those for whom English is a second language and whose cultural and national customs differ from long-term residents of the United States.

The following comments from the attitude survey give a sample of the perceptions attorneys have of how ethnic minorities are treated in the Georgia courts.

Black Male: "There is widespread ignorance and apprehension of the legal system by segments of society."

White Male: "My opinion, based on observation, is that nothing is really explained. When it is, it is rushed and hurried and Hispanics are bewildered."

White Male: "Minorities, especially Asians, have very little chance in the system, most have limited speaking and reading abilities. No political power."

Hispanic Male: "Racial bias in the Hispanic community comes from [a] failure to properly communicate, and indifference in some courts."

White Male: "We have a large migrant workforce in other counties in the circuit and I do feel they do not get a fair shake in court because of language barriers and cultural difference and temporary residence as well as prejudice of court personnel."

Hispanic Male: "Absolutely no effort is made to accommodate non-English speakers. Rather than attempting to communicate with non-English speakers, the court system seems angry/hostile to such person as a burden. This attitude does not promote justice."

Persons from these ethnic communities, particularly the recent immigrants, face problems that our court system has to handle more frequently now. Witnesses at the public hearings and forums testified that these recent newcomers do not understand court processes and were often unaware of how to fulfill their responsibilities in the judicial system. For instance, the Executive Director of the Georgia Human Relations Commission noted that immigrants and new arrivals from foreign countries face a lack of understanding of our system. Many come from countries where the police are feared by all except the few persons with political power. Also many Georgians are not aware of court procedures.

A Hispanic attorney in metropolitan Atlanta stated, "[o]ver the past five to ten years, there has been a dramatic influx of Hispanic migrant workers into a number of Georgia's counties. Many have been employed in the Georgia poultry industry, or as seasonal fruit or vegetable pickers throughout rural Georgia. In the metropolitan urban areas, many migrant workers tend to find employment in the lawn care industry or similar occupations. The majority of these workers either speak no English, or have very limited use of the English language. Needless to say, they

tend to get in trouble with the law from time to time, and are terrified by local court appearances in Georgia's courts. The court system is not prepared to deal with the lack of communication with the Hispanic defendants due to the lack of court interpreters, and further due to the fact most of Georgia's state and superior court judges do not speak or understand Spanish. As a result, the great majority of Hispanic criminal defendants are at an immediate disadvantage in their first encounter with our judicial system."

The Project Director of the Farm Workers Division of Georgia Legal Services stated that "the primary barrier to Hispanic migrant farm workers receiving equal justice is a language problem. There is a need for interpreters and foreign language materials so as to provide equal access to the courts."

National statistics from the 1990 census indicate that Hispanics are three times more likely than non-Hispanic whites to live below the poverty line. Slightly more than half of Hispanics 25 years old or older have at least a high school diploma as compared to 83% of non-Hispanic whites. The President of the Hispanic Alliance stated that Georgia's 1990 census figures indicate that about five percent of residents speak something other than English at home; this is a 113% increase over the 1980 census. Figures for the Hispanic population in Atlanta indicate that: about 16% have less than a 9th grade education, the poverty rate is about 19%, and the per capita income is \$12,966. She noted that even if forms are available in Spanish, the average Hispanic in the state has not been here long and has usually no more than a 6th grade education. The Georgia Department of Education's 1994 annual limited English proficiency status report showed that there were 28,105 language minority students in the public schools. Forty-two percent (11,731) were considered to have insufficient English language skills to permit full class participation. Although half of the limited English proficiency students had Spanish as their first language; there were thirty different language categories for the remaining students.

PROBLEM STATEMENT:

The lack of information and understanding of the court system, especially among the poor and recent immigrants, results in people being unaware of their rights, leading to fear and distrust of the legal system and ultimately to restricted

access to the courts. A need exists to better educate court users and potential court users as to the court system; what to expect in court proceedings; how to best make use of the legal system; and individual rights, etc.

RECOMMENDATION:

1. The Implementation Committee should be responsible for creating and updating general court information in a variety of formats (e.g., pamphlets, videotapes, etc.) within one year of its establishment. The chief judge of each court should be responsible for distributing these materials to diverse constituencies on an ongoing basis, as well as for having the information available at courthouses, legal clinics, etc. This information should be presented in an easily comprehensible fashion and should be provided (in those counties with significant populations) in Spanish, Vietnamese, and Korean translations. The court clerk offices and district attorney offices should also engage in dialogue with the Implementation Committee and recipients of this information in order to develop needed revisions.

There are many useful resources for materials on court processes that can be used or modified for Georgia and made available to the social agencies and persons working with disadvantaged minorities and communities of immigrants. For instance, the State Bar of Georgia has several useful pamphlets including *Buying a Home*, *Auto Accidents*, and *A Good Witness*. The pamphlets concerning *Divorce and Wills* and the *Grievance Procedures of the State Bar* have been translated into Spanish. The Administrative Office of the Courts has a simple *Guide to the Courts* available in both English and Spanish. There are several general and Georgia-specific videotapes which have been produced by various sources which may also be helpful. These include: *Give Credit Its Due*, created by the Georgia Bankers Association in cooperation with the Consumer Credit Counseling Service of Greater Atlanta; *Through My Own Eyes*, a program for immigrants produced by the American Judicature Society; *What's Going to Happen to Me?*, an Institute of Government, University of Georgia tape about juvenile court procedures; and two tapes concerning guardianship of adults and juveniles produced by the Institute of Continuing Judicial Education. An innovative resource created by the Michigan courts is called Tele-Court, which provides general information about the courts of the state via a telephone voice response system.

The difficulty is getting these resources to communities who need them and coordinating the resources for use when and where needed. The Georgia Indigent Defense Council has a reference list of resources for individuals calling them, but such lists need to be expanded and be available to all court system personnel for use in proper reference of the public to services needed.

Section 3: Court Documents and Forms

PROBLEM STATEMENT:

Non-English speakers do not have the option of reading for themselves forms and documents generally provided to other litigants.

RECOMMENDATION:

2. Commonly used forms and any other documents generally given to the public should be made available in the most frequently requested languages so that non-English speakers will not need the service of a translator to complete them. This includes, e.g., warrant applications, temporary restraining order applications in domestic violence cases, bail orders, small claims complaint forms, dispossessories, driver's license notifications of implied consent, habitual violator status, and suspension of license, etc. If a non-English speaking person is waiving a constitutionally recognized right, then the waiver should be written or printed in the primary language of the individual. If the translation is not available because the language is infrequent or obscure, the waiver should be read to the individual in their own language, prior to signature.

Judges, court personnel, and attorneys were asked in the attitude surveys whether they felt that information and court forms were adequately provided in languages other than English for non-English speaking court users. More than 30% of each of these groups felt that such information was *not* adequately provided; the group responses were superior and state court judges, about 50%; juvenile court judges, 70%; attorneys, 40%; and clerks of court, 30%. When a question was asked as to whether a recommendation that court and legal information provided in a variety of languages would have a significant impact on bias, 20 to 30% of each of these groups felt this recommendation would have such an impact.

Individual responses, particularly of attorneys, varied as to their feelings about the translation of court forms:

"I believe that English should only be provided on forms with non-English speaking litigants either using an interpreter or learning English themselves."

"Our language is English. In the 20's we didn't bend over for Italian or German immigrants."

The Commission recognizes that in most communities the provision of court forms in languages other than English is probably not necessary, particularly if the non-English speaker is permitted adequate access to a qualified interpreter. In some communities, however, there are a sufficient number of non-English speakers that information should be available to community groups providing service to such individuals. Court forms should be available to insure that these minorities receive equal treatment under the law.

PROBLEM STATEMENT:

For immigrant and refugee communities, educational outreach needs to occur long before an individual encounters the court system. This problem exists for all minorities, however, particularly those with low educational and income levels.

Testimony from the public forums and hearings indicated that ethnic minorities very often avoid the court system despite being faced with legal problems. A Korean attorney stated that Korean immigrants are unfamiliar with the U. S. judicial system. Civil matters in Korea are generally handled outside the court system; and the immigrants must learn quickly here that there is more litigation and the need for an attorney.

During a forum with the Asian community in Doraville, Alvin Wong, President of the Georgia Chapter of the National Asian Pacific American Bar Association (NAPABA) explained that "many Asians come from societies in which the police and court system are simply viewed as the enforcement arm of a repressive government. As a result, there is no sense that the system should be trusted, and even cooperation may be viewed as highly risky." Many crimes go unreported as victims generally do not view the legal system as a source of assistance or a solution. These persons are easily taken advantage of by unscrupulous lawyers

and other professionals engaged in the unauthorized practice of law.

They often may avoid the issue so long that there is not enough time to arrange an adequate defense or non-adversarial solution to the problem. Such avoidance tends to allow relatively small problems to turn into large problems.

RECOMMENDATIONS:

3. Education about the legal and judicial system and their processes should be integrated into the public school curriculum early in children's school careers. The State Bar, law schools, the Law Related Education Consortium, the Department of Education, and others should be encouraged to develop "street law" or other practical legal education programs in the schools and in community outreach programs. Efforts should be made to get information to communities of immigrants and non-English speaking individuals.

4. The Implementation Committee should continue to identify organizations that work with various segments of the immigrant or refugee community and develop programs (e.g., orientation, etc.) to reduce alienation from the system.

There are many community or social agencies working with the ethnic minorities in Georgia. The courts should seek to strengthen connections to these organizations to ensure that information is available to the community about court procedures and resident's rights in our state courts. An example of such efforts is the *Bridging the Gap Project*, a consortium including the U.S. Department of Justice, Community Relations Service; the Georgia Human Relations Commission; Asian Community Services; and the Catholic Social Service, Migration and Refugee Services. The purpose of this consortium is to overcome cultural barriers for crime and domestic violence prevention; to improve the quality of life and standard of living for refugees; to develop materials in languages to be used by voluntary resettlement agencies to orient new arrivals; to hold community meetings with law enforcement; to develop diversity training for the Public Safety Training Center; and to provide mediation services.

Section 4: Communication with Court Officials

During the public hearings, problems resulting from inability to communicate with law enforcement officers and court officials

were pointed out by numerous individuals. For instance, a member of the Atlanta Bar Association's Subcommittee on Racial and Ethnic Bias stated that often people only needing simple information are left sitting for hours at the courthouse because no one is able to find out the information they need.

The director of the Agencia Latina Americana said that she knew of instances in which Hispanics get "lost in the system" because of a lack of communication and an implied lack of interest in properly handling the cases, noting that they may sit in jail for upwards of two months on as simple a charge as speeding.

One of the respondents to the attitude survey pointed out that not speaking English has been a barrier to some women seeking temporary protective orders. Not only is the paper work generally in English, but also the prosecuting attorneys and shelter workers usually speak only English.

An attorney from Hall County testifying before the Commission reported a lack of effort on the part of law enforcement to ensure that Hispanics understand what is taking place in an arrest: they often have no idea of the charge(s) against them, and may sit in jail for days or weeks without any idea of what they need to do. He stated that frequently non-English speaking people will waive their rights at an initial hearing without understanding what their rights are and what it means to waive them. As a result, they go through the initial hearing without an attorney and without an interpreter. He also discussed how the police and judges get frustrated with the difficulties introduced by having to communicate through an interpreter and how the non-English speaking individuals too often bear the brunt of this frustration.

During the Gainesville/Hall County public forum, it was noted that even though there is a fairly significant Hispanic population in the area, there are very few attorneys or paralegals in the area who have any command of Spanish. At that time there was also no one in the public defender's office who was proficient in speaking Spanish.

PROBLEM STATEMENT:

The lack of general information about and the understanding of the court system, so often seen among ethnic minorities for whom English is a second language, is exacerbated by the fact that there are very few bilingual court employees who could

explain procedures and provide directions for ethnic minority court users. Furthermore, those who do not speak English are at an additional disadvantage in that the courthouses are not equipped with signs in languages other than English.

RECOMMENDATIONS:

5. The courts and associated agencies and departments (e.g., law enforcement, DHR, DFACS, DCYS, etc.) should make efforts (in those counties dealing with a significant number of ethnic minorities) to hire bilingual employees, especially in positions involving a good deal of contact with the public. Steps should also be taken to make other employees aware of the social mores of the cultures in their regions so that the employees may better identify and communicate with clients.

6. In counties with significant concentrations of non-English speaking persons, courthouses should be equipped with either a designated information officer or adequate and appropriate signage in the relevant languages so that court users can easily be directed to specific locations and can be given pertinent information.

Local courts and law enforcement agencies are beginning to address these problems in different ways, one of which is the opportunity for officers to take special training courses in Spanish and/or cultural awareness. The Gwinnett Police Department, for example, has developed its own training program to teach officers Spanish and cultural sensitivity. In the city of Doraville, police hired an Asian radio dispatcher who speaks three languages.

The Georgia Peace Officer Standards and Training (POST) Council and Georgia Public Safety Training Center were contacted regarding the availability of cultural diversity and language skills training of public safety officers in Georgia. There are no mandatory courses specifically focused on cultural diversity and foreign language issues. The required POST *Basic Law Enforcement Training Course* gives some brief attention to some of these issues in its *Interpersonal Communication* and *Officer and the Public* sections. These sections provide instruction on dealing with barriers to effective communication and on law enforcement and minority communities. Several Spanish and cultural awareness courses are conducted by the Georgia Police Academy through the Georgia Public Safety Training Center on an elective basis.

Dr. Eugene Schmuckler, who prepares and teaches such courses at the Public Safety Training Center stated that the courses are focused on effective communication (e.g., dealing with stereotypes, conflicts). He said that he likes to refer to the cultural awareness course as "tactical cultural preparedness." He said that the Spanish courses are very good, and that they do try to incorporate cultural information in the courses. He did note, however, that no matter how good the classes may be, if the officers do not practice what they have learned they will lose it.

Regarding attendance at these elective courses, Dr. Schmuckler indicated that the number of officers electing to take these courses is quite low. He also stated that in his experience, many of the officers taking the cultural awareness course view it as punishment for something that they have said or done. Given the importance of these issues, however, Dr. Schmuckler said that they are trying to incorporate such material into other elective courses having better attendance (such as courses on family violence and crisis intervention).

RECOMMENDATIONS:

7. Law enforcement agencies should encourage their officers to participate in cultural diversity courses, particularly in counties which have significant minority populations. Similarly, law enforcement agencies in counties having significant Hispanic communities should strongly encourage officers to take Spanish courses as well.

8. Additionally, law enforcement agencies should be encouraged to seek out local agencies and associations that provide services to minority groups and solicit their participation in seminars with the local population.

The encouragement to participate in these courses must be done in a very positive context, pointing out the benefits to the officers. Conversations with individuals at the Training Center revealed that often officers in the diversity training courses are there against their will as a form of punishment. This is counterproductive. If law enforcement agencies and local agencies providing services to minorities start cultural awareness programs and establish points of contact, bi-directional communications can be initiated.

The Georgia Chapter of the National Asian Pacific American Bar Association has over the last year organized several clinics with volunteer attorneys to assist the Asian/Pacific Islander

community. Atlanta Legal Aid is engaging in speaking engagements, radio public service announcements, and brochures to reach the low income communities. Georgia Legal Services has published education brochures in Spanish and organized a task force to determine how to better serve clients whose first language is Spanish. The courts, in such counties as Cobb and Gwinnett, have generally responded with efforts to increase the availability of qualified interpreters and, use to some extent, use telephone translation when a local interpreter cannot be located.

Section 5: Translation and Interpretation in the Courts

PROBLEM STATEMENT:

There are no uniform procedures guiding the use of foreign language interpreters in Georgia's courts. There appears to be a lack of consistency and availability of adequate court interpreter services, along with a lack of awareness of the need for and the scope of available translator services. Furthermore, there are no court-adopted standards governing the required qualifications for interpreters or for evaluating the performance of interpreters.

Numerous persons at the public hearings and forums testified to the unavailability on a timely basis and the inadequacy of interpretation for non-English speaking persons in the state courts. For example, the Director of the Sumter County Prison and Jail Project said interpreters are often not available for Hispanic migrant workers in his region while the testimony from a Hispanic citizen noted that a police officer had served to communicate with defendants in municipal court proceedings when no interpreter was available. Other instances throughout the state included volunteers solicited when the proceeding began, county employees who barely speak English themselves, children serving as interpreters for family members, and even inmates interpreting for fellow detainees.

After the receipt of such criticisms at the hearings and forums, the Commission conducted a survey of the judges of the 54 counties which (according to the 1990 census) had 1% or more Hispanic or Asian populations. About 58% of the judges responded. This survey showed that although interpreters are not frequently used by each court, about 25% of the respondents had used an interpreter in their courts 12 or more times a year. Spanish was the most frequently requested language, followed by

Vietnamese and Korean, although over fifteen other languages were also requested.

The survey showed that for most of the courts there were no established procedures for obtaining interpreters or ascertaining that they meet any minimum standard for legal interpretation and translation. Only 60% of the courts responding stated that they required the interpreter to take an oath. A higher percentage of superior and state courts required an oath as compared to magistrate and juvenile courts. Since there is no statutorily required language, the oath taken was not uniform although most courts used variations of either the sign language interpreter or witness oaths. The majority of courts thought the availability of interpreters was acceptable, although 36% of the respondents reported postponements due to lack of an interpreter. The majority of courts did not require word-for-word translation.

RECOMMENDATIONS:

9. A uniform system of standards for court interpreters should be established. The Supreme Court, with the councils of the trial court judges, should adopt standards for certification and devise standard instructions regarding the right to and use of interpreters in all levels of the courts. These standards should be implemented through the uniform rules of court.

10. A standard oath should be developed for foreign language interpreters for use in all courts.

Currently, there is no statewide process in Georgia to certify the abilities of an interpreter in the courts and there is no evaluation of the adequacy of interpretation services. At the Commission forums, testimony indicated a need to specify the circumstances when the different possible modes of interpretation are acceptable (e.g., simultaneous, sequential, or synopsis translation; or the use of an interpreter present in the courtroom versus telephone services such as the AT&T Language Line).

At the forum for the Asian community in Doraville, Georgia, an attorney stated that when interpreters are provided the translation is often summarized, not a verbatim translation, and may or may not be accurate.

An associate magistrate in DeKalb County spoke of the need for timeliness and a less cumbersome and expensive means of obtaining interpreters. He stated that sometimes it takes several

days to locate an interpreter for a less common language. He further pointed out that usually the judge can only rely on the interpreter's self-certification as to that interpreter's abilities.

The President of Georgia Hispanic Alliance urged more stringent qualifications for interpreters to ensure the accuracy of the translation.

A letter from a court administrator suggested the need for a court interpreter certification program which would help to assess the qualifications and ability of the interpreters.

PROBLEM STATEMENT:

Lack of availability of "certified" interpreters. Also, the lack of interpreters for less commonly used languages.

RECOMMENDATIONS:

11. A process for certification of interpreters as to their understanding of legal terminology and Georgia court procedures should be established. Guidelines for required qualification of interpreters as to language proficiency should also be formulated.

12. Guidelines for determining the most adequate interpreter services according to the proceeding type, complexity, and the time constraints need to be established. The Implementation Committee should ensure that these guidelines address the issue of having different interpreter qualifications and requirements/options for each stage of the criminal case process in order to balance interpreter proficiency and availability (so as to minimize a defendant being unduly detained pending location of an interpreter).

Currently a proposed uniform rule from the Gwinnett Superior Court Administrator is being circulated to the trial court judges councils by the Supreme Court to permit use of the AT&T language line service in non-jury proceedings. The Commission feels that permission to use this service will be helpful, but more specific guidelines for use should be developed considering the quality, security and confidentiality of the service in various court settings.

13. The Implementation Committee should also ensure the guidelines address who is responsible for providing interpreters in different case types. The Commission strongly recommends that the court be responsible for providing interpreters in civil cases where a litigant cannot afford one.

The court should also be responsible for paying for interpreters in all criminal cases where such services are required.

14. Video and/or audiotape records should be made to preserve the translations in critical proceedings in criminal actions.

15. A centralized resource center should be established to collect and provide information about the qualifications and availability of interpreters. A statewide registry of foreign language interpreters with at least an educational and training profile should be considered by the Implementation Committee.

The State Justice Institute has recently published model guidelines for use of interpreters covering: training, testing, qualifications, telephone interpretation, codes of ethics, and oaths. The Implementation Committee should use this model in developing appropriate guidelines for Georgia.

PROBLEM STATEMENT:

There seems to be a general lack of awareness of the need for translation or interpretation services and what constitutes adequate and appropriate translations or interpretation.

The Commission's interpreter survey showed that judges were generally unaware of interpreter resources. Only 36% were aware that the federal courts have a qualification process and interpreter list. The federal courts have a certification process for Spanish, Haitian, Creole, and Navajo interpreters. About 92% of interpreted federal court proceedings are in Spanish. The federal government is also beginning to develop programs for qualifying other languages without certification of simultaneous translation. These programs are intended to screen educational credentials, require an English proficiency examination, and translation from an English language audiotape to a target language and back to the original English. Other states that have or are developing competency testing are: Massachusetts, New York, California, New Jersey, New Mexico, and Washington. Nebraska has organized a registry system.

Prior to the Commission survey, only about 44% of the judges had heard of the availability of telephone translation services of the AT&T Language Line. Although telephone technology is now available, it does not solve certification problems. Additionally,

the telephone translation service faces problems such as cost, equipment limits in courtroom settings and the need for confidential communication between client and attorney. Overall, very few courts did anything to assess the qualifications of the interpreters used or the adequacy of the translations made.

RECOMMENDATION:

16. The judiciary, attorneys, court personnel, and law enforcement officers should be better educated as to the need for and right to interpreter services and how to obtain and use these services. The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter.

PROBLEM STATEMENT:

Lack of correct and verbatim interpretation of court proceedings.

Testimony received at the public forums alleged that interpreters had not made accurate translations and had summarized questions and responses of lawyers and parties at trial proceedings. Individuals also testified that parties had been denied the right to provide and choose their own interpreters.

Additional testimony implied that mandated conditions of sentences and/or alternative sentences such as educational and counseling sessions were inaccessible to non-English speaking defendants.

RECOMMENDATION:

17. Judges should ensure that trial proceedings are translated verbatim. Parties to court proceedings should have the right to the assistance of a private interpreter (provided by the party) to ensure accurate interpretation and to preserve confidentiality of the attorney-client communications. Also, parties should have the right to provide private interpreters at court mandated sessions such as counseling, DUI schools, and parent education courses. The court should be aware of whether mandated programs will be accessible to non-English speaking persons.

V. LEGAL REPRESENTATION FOR PERSONS UNABLE TO
AFFORD PRIVATE COUNSEL

I know that indigent defense carries with it more political baggage than political appeal. But the brightest hour for public servants comes when difficult duties are faced up to and performed. We need also to remember that if the state can deny justice to the poor, it has within its grasp the power to deny justice to anybody. Justice belongs to everybody or it belongs to nobody.

Chief Justice Harold G. Clarke
State of the Judiciary Address
January 14, 1993

Minorities, particularly African-Americans, constitute a disproportionately large percentage of persons living in poverty. The 1994 *Georgia County Guide* indicated that in 1989, 30.3% of all black Georgia citizens were below the poverty line while only 8.8% of white persons were similarly situated. There were 57 counties (36%) in which greater than forty percent of the black residents were below the poverty line. The county with the highest percentage of whites under the poverty line had only 23.8% of whites in poverty. In 1991, 62 (39%) of Georgia's 159 counties had a per capita income less than the state average of Mississippi (\$13,318), the poorest state in the nation. Of those receiving Aid to Families with Dependent Children in the 1993 fiscal year, 75% were black whereas only 23% were white; the remaining 2% were of other racial groups.

For these and other individuals unable to hire an attorney, typically the only means available to address their legal needs is for them to rely on attorneys made available through public and/or private funding or through pro bono services donated by lawyers. Persons charged with criminal offenses facing a chance of incarceration but who do not possess the financial resources to afford legal representation have a Constitutional right to have an attorney appointed by the court to represent them, at the expense of the county, through indigent defense programs. For civil cases and administrative law matters those unable to afford legal counsel may turn to legal aid organizations for assistance, such as Georgia Legal Services (GLS) and Atlanta Legal Aid. In that access to the legal system is constrained to some degree by an individual's ability to hire an attorney, it could be argued that problems associated with providing legal assistance for those in

need could possibly result in differential treatment in that there is the potential for inequitable legal outcomes for the poor.

Historically, minorities have constituted a disproportionately large percentage of the poor. Minorities have tended to have lower family incomes than do non-minorities. On a national basis in 1990, for example, the percentage of black households with an income of less than \$7,500 was 32% while the corresponding percentage of white households was 13%. To the extent that many of the persons with very limited financial resources have been minorities, any inequities in the legal representation of the poor could have a differential, albeit indirect, effect on minority individuals.

PROBLEM STATEMENT:

In that minorities represent such a large proportion of defendants financially unable to afford legal representation, inadequacies in availability of qualified legal representation for persons of limited financial resources hold the potential for resulting indirectly in a differentially negative impact on minority court users.

It is important to note that the Commission acknowledges that any inadequacies in the present system of providing legal representation could result in a high *potential* for racial disparity in treatment. The Commission found no explicit indication that minority court users unable to afford legal representation were in any way treated differently than were non-minority court users in similar financial situations. Although there appears to be no direct racially-based differential treatment of minority as opposed to non-minority poor, throughout the state the poor (a large proportion of whom are minorities) may remain at a disadvantage relative to those who are able to afford private counsel. Thus, although the court system may not be operating differentially on minorities *directly*, there may indirectly be a disparate outcome as a result of a third factor, namely limited financial resources available to many minorities.

Section 1: Legal Representation in Criminal Cases

“Indigent defense” can be defined as the term used to describe the provision of lawyers to represent poor people who are charged by the state with felonies or misdemeanors and the provision of lawyers to represent parties in juvenile court. The 1968 Criminal

Justice Act made each county responsible for providing legal representation for criminal defendants unable to afford private counsel. In 1979, the Georgia Indigent Defense Act made the operation of local indigent defense programs the responsibility of local indigent defense committees, which are appointed by the superior court and county commission of each county, along with the local bar association. Any such committees established under this act are eligible to receive, and can apply for, state funds appropriated to help counties off-set the costs of indigent defense.

This Act also created the Georgia Indigent Defense Council (GIDC). Among its statutory purposes and duties, GIDC distributes the state appropriations and other indigent defense funds through grants to counties, recommends uniform guidelines for operation of local indigent defense programs, and provides technical and legal assistance as well as clinical and training programs for attorneys representing indigent defendants.

GIDC maintains information on the indigent defense services provided by those counties applying for funds through the Council; in its 1994 Annual Report, GIDC indicated that there were 111 such counties. Of these counties, 18 counties provide services to indigent defendants through public defender programs. The twelve public defender offices serve 18 counties, 45 counties use contract defender programs, and fifty-two counties use appointed or panel attorney programs.

Anecdotal information submitted to the Commission suggests that there is a general perception that the current system of providing legal counsel for criminal defendants unable to afford private counsel seems unable to handle adequately the legal needs of Georgia's indigent. A consistent sentiment among a number of individuals testifying at the public hearings was that the extremely high caseload along with inadequate funds and resources compromises the quality of representation provided to the indigent. For example, when Tommy Morris, then Chairperson of the Board of Pardons and Paroles, was speaking at the Commission's first public hearing, he stated that "we do not have a decent indigent defense system in this state." He expressed his opinion that, in addition to court appointed attorneys being generally underpaid, he believed that they are often times very ineffective. He emphasized the need for stronger representation than what is currently available to the poor and minorities "because they're not getting a fair shake." Dr. J. E. Lowery, Southern Christian Leadership Conference President,

relayed his perception of public defenders and court appointed counsel as “often treated with disrespect and disregard because of the clientele they service and/or their large caseloads prevent them from rendering adequate representation. Just as damaging, appointed counsel from the private bar are often inexperienced in the area of criminal law.”

Information from a number of sources indicates that minorities represent a very large percentage of the criminal defendants in need of public defense. For example, an assistant district attorney from the Ogeechee Circuit, testifying at one of the public hearings, stated that 90% of his cases are handled by a public defender and that nearly all of these cases involved black defendants. In a letter to the Commission, the DeKalb County Public Defender stated that his office handles 70% of all indicted felony defendants; in 1993, 82% of their cases involved black defendants and 3% involved Hispanic defendants. At the public forum with the Hispanic community in Gainesville the statement was made that almost all Hispanic defendants in that area are in need of public defenders. Given the high proportion of minority persons arrested and taken to court, combined with their all too often weak financial standing and their reliance on the indigent defense system, it is clear that deficits in the system available for defending indigent persons could potentially result in a differentially negative impact on minorities.

Again, it should be noted that the Commission does not presume that all financially limited minority defendants receive compromised legal representation. In fact, the DeKalb County Public Defender stated in a letter to the Commission that his office has maintained a computer database on indigent cases in his county and finds no significant racially-based differential treatment of the indigent persons represented by his office. He stated that there were comparable racial/ethnic percentages of persons: acquitted or dismissed; sentenced to probation or time served; and sentenced to prison. Furthermore, he stated, there were no racial disparities in terms of length of prison terms or in terms of reducing felonies to misdemeanors. Thus, although there appears to be no differential treatment of minority as opposed to non-minority indigent defendants (at least in DeKalb County), throughout the state the economically disadvantaged (a large proportion of whom are minorities) remain handicapped relative to those who are able to afford private counsel.

Anecdotal evidence suggested that a defendant's inadequate financial resources could predispose them to be less likely to be released on their own recognizance; to be more likely to be incarcerated and for longer periods; and to have fewer alternatives to incarceration available to them. Thus, any inadequacies in Georgia's ability to provide legal counsel to the indigent potentially place a large proportion of minorities at a disadvantage in the legal system. These inadequacies (discussed on the following pages), according to the information the Commission received, include: a need for increased funding; excessively high caseloads and few resources; problems in the manner in which attorneys are compensated for indigent representation; a need for improved qualifications of court appointed attorneys; and a need for more pro bono representation.

High Caseload, Limited Resources

The number of indigent persons in need of legal representation each year is striking. In its 1994 annual report the Georgia Indigent Defense Council (GIDC) disclosed that in 1993 over 121,000 indigent cases were handled in the 111 counties that applied for and received state funds through the Council for legal representation of indigent adults facing criminal charges, for juveniles in delinquency proceedings, and for families and children in deprivation or termination of parental rights cases. Indigent defense represented roughly 64% of the total filings of these types of cases. Indigent cases averaged 1.87% of the population for these counties, ranging from 0.34% to 7.30% of individual county populations. These cases were handled by 99 attorneys in the twelve public defender programs serving 18 counties, 74 contract defenders, and 1836 private attorneys serving on panel attorney programs.

In 1993, at the Commission's first public hearing, Eric Kocher, then director of GIDC, stated that at that time it took over 21 million dollars a year to fund indigent defense statewide. Mr. Kocher cautioned that even with good, dedicated attorneys, limited financial resources coupled with a high caseload could in some cases compromise the quality of representation. In the 1994 GIDC report to the Governor, A. James Elliott, President of the State Bar from 1988 to 1989, was quoted as stating "recent statistics compiled by the U.S. Department of Justice reflect that

Georgia has slipped from 39th to 44th nation-wide in the amount spent per case on indigent defense.”

Of the over 21 million dollars spent providing constitutionally mandated legal representation to Georgia’s indigent criminal defendants in 1993, over 90% was paid for from county funds. The average 1993 cost per case for indigent defense was \$173.65; the average cost per resident was \$3.25. GIDC, stating that the cost of indigent defense rises steadily each year by ten to twenty percent, contends that “[c]ounty taxpayers are ill-equipped to meet these rising costs which often bear no relation to the size or the relative wealth of a county.”

The state appropriations for GIDC for the 1994 fiscal year were two million dollars, 100% of which was to be distributed to the 111 counties which applied for funding assistance from GIDC. These 111 counties cover 86% of the state population. GIDC also distributes \$500,000 from the interest on trust accounts of State Bar members and the Clerks of Superior Court and Sheriffs Trust Accounts. (The General Assembly first provided for the distribution of interest from the Clerks and Sheriffs accounts in 1993.) The Criminal Justice Coordinating Council has also allocated federal grant funds to GIDC. As to funding for the 1995 fiscal year, GIDC requested \$4,700,000. The Association of County Commissioners of Georgia (ACCG) supported the need for a minimum \$4 million in state appropriations.

Due to limited resources, public defenders are forced to handle excessively large caseloads. The Houston County public defender stated that everyone in her office has about 300 open files at any given time. The DeKalb County Public Defender indicated that in 1992, one attorney in their office closed 370 felonies, 304 probation hearings, twelve misdemeanors, and two appeals; another attorney closed 239 felonies, 287 probation hearings, 476 misdemeanors and one appeal. GIDC reported that for the 1993 calendar year, public defender offices handled a total of 36,203 cases. In comparison with court caseloads for comparable case types in the same counties, the cases handled by public defender offices was roughly equivalent to 44% of case filings.

Furthermore, allegations were made that public defenders and court-appointed attorneys often lack the necessary support resources, such as investigators, paralegals, and clerical support, needed to assist them in adequately preparing and managing their cases. For example, the assistant district attorney from the

Ogeechee Circuit stated that the public defender in his area did not have any non-attorney personnel to assist in the preparation of cases. Based on the Commission's Employment Survey, the staff size of the twelve public defender offices was compared to the staff size of the district attorney offices in the same counties/circuits. There were roughly 40% more attorneys employed in the district attorney offices than were working in the public defender offices. With respect to support staff (including investigators, secretaries, and other positions) there was an even greater difference. The overall size of the support staff in the district attorney offices was over 200% greater than the size of the public defender offices' support staff.

An assistant district attorney testifying at a public hearing stated that in his opinion the high workload and the poor compensation that the indigent defense system faces often result in a compromised defense because the attorneys are unable to adequately investigate and prepare cases. He pointed out that this was not a negative reflection on any individual's abilities but rather an indicator of insufficient resources. He believes that this contributes to an overall perception of bias in the court system, and feels that the state should do more for indigent defense by carrying a greater share of the costs.

In discussing the inadequacies of the indigent defense system, a number of individuals focused on disparities between public defenders' offices and district attorneys' offices in terms of attorney compensation and resources. A public defender from Houston County pointed out that prosecutors are offered better, state funded training, have dramatically lower caseloads, and receive higher salaries than do public defenders (noting that she makes less than half of what the district attorney makes). The Glynn County public defender stated that the salary inequities place public defenders' offices in the position of being much less able to attract more highly qualified attorneys.

A former DeKalb County Commissioner speaking on behalf of HISPAC also discussed an imbalance of funds and manpower between district attorney offices and public defender offices. She talked about disparity between the two offices in terms of available investigation resources for preparation of cases. She believes that this lack of resources, combined with the very high volume of cases that the public defender offices have to handle, compromises the quality of representation that defendants receive.

The DeKalb County Public Defender had concerns about the ramifications of such inequities, and strongly advocates offering competitive salaries as he feels is done in his county. He stated in a letter to the Commission that “[i]f Public Defender staff salaries are less than equivalent prosecution salaries, the quality of staff will inevitably be affected. Our office illustrates the benefit of equal pay for staff lawyers; of our 24 attorneys, 12 have been members of the bar for ten years or more; 19 for five or more years. Five lawyers have been with our office for over ten years, 13 for more than five years. Our staff is generally equal in quality with the prosecution, though fewer in numbers and support staff.”

As a means of helping address the requests for additional funding and assistance for county indigent defense programs, there has been a suggestion that the state take on a much greater role than it currently does. In 1994 GIDC proffered its “Equal Justice / Equal Responsibility: 50/50 in Five” program, which proposes a gradual increase in state funding over the next five years so as to achieve equal funding from county and state by 1999. GIDC estimates that the cost of indigent defense (statewide) will be \$30 million by 1999. This would require an increase in GIDC monies (state appropriations and other sources) to \$15 million by 1999. The 1990 Governor’s Conference on Justice supports the 50/50 match program, as does the ACCG. Both the State Bar of Georgia and the Criminal Justice Coordinating Council have recommended that the state assume full funding of indigent defense. The 1990 Governor’s Conference on Justice also recommended the state fund GIDC so that the Council can reimburse counties 100% of their cost for indigent defense, or at least so that the state will provide each county with matching funds. A number of individuals testifying at the public hearings have endorsed similar changes. In noting that indigent defendants may often receive compromised legal representation because of a lack of adequate resources, a staff attorney with the NAACP Legal Defense and Education Fund recommended that Georgia dispense with its current decentralized indigent defense system and put in its place a credible, well-funded statewide public defender system. The Houston County public defender also called for better funding for indigent defense and the consideration of some form of state-wide public defender system. At the Commission’s first public hearing,

the Chairperson of the Board of Pardons and Paroles at that time likewise advocated a strong statewide indigent defense program.

RECOMMENDATIONS:

1. *A statewide indigent defense system should be established requiring all counties to adopt uniform state indigent defense guidelines which provide adequate resources for the representation of the indigent. Steps should be taken to ensure that this system be suitably and equitably funded between state, county, and other funds.*
2. *Funding for indigent defense (legislative and otherwise) should be increased so as to adequately compensate attorneys and to provide for support resources (e.g., investigators, paralegals).*
3. *The state's current funding and support for indigent defense should be increased. Alternative sources and/or methods of funding should be developed.*

In terms of addressing the issue of high caseloads, the DeKalb County Public Defender stated that he “would recommend that the Georgia Supreme Court consider some sort of caseload guideline, or at the very least initiate a study of caseloads of the indigent defense system.” One of the Georgia Indigent Defense Council’s four statutory purposes and duties is to recommend uniform guidelines within which local indigent defense programs must operate.

At the time this report was compiled, Michael Mears, Acting Director of GIDC, indicated that no attorney caseload guidelines had been officially adopted and implemented statewide. Mr. Mears stated that GIDC endorses the caseload limits set out in a recent study of caseloads conducted for Hennepin County, Minnesota by the Spangenberg research group. This study recommended that a full-time public defender work 1,700 case hours per year (exclusive of administrative and training time) with the following suggested caseload standards: homicides, three per year; other felony cases, 100-120 per year; gross misdemeanors, 250-300 per year; misdemeanors, 400 per year; child welfare, 80 per year; other juveniles, 175 per year; and other cases, 200 per year. (See *Kennedy v. Carlson*, No. MC92006860, slip op. at 12 (4th D. Minn. Apr. 24, 1995).)

RECOMMENDATION:

4. *Establish and require adherence to guidelines concerning caps on caseload.*

Methods of Payment for Indigent Representation

Another criticism of the current indigent defense system centers on the various methods of paying attorneys for representing indigent persons. Rule 29.7 of the *Uniform Rules for the Superior Courts* provides that each local indigent defense program is to decide on its method of providing indigent defense (public defender, contract attorneys, appointed attorneys, or some combination thereof). Rule 29.9 specifies that each county utilizing a panel attorney program is responsible for establishing a pay scale for compensating attorneys representing indigent persons. This Rule states that:

Each program shall prescribe minimum fees to be paid as a total fee, regardless of hours, in certain categories of cases, governed by these rules. In prescribing such minimums, the court shall take into consideration the complexity of the case categories and the corresponding fee that is presently being obtained by competent members of the local bar for such representation where privately retained. While the fee paid under the panel program need not equate that of a corresponding fee obtained by a private practitioner, there should be a reasonable relationship.

Thus, there are no specific uniform compensation standards systematically followed throughout the state. Consequently, attorney compensation methods and rates vary depending on the county, the type of indigent defense system, and available funds.

In the majority of instances, court-appointed attorneys are paid per hour, with rates ranging from \$35 to \$65 per hour for in-court time (with an average of \$47/hr.) and from \$25 to \$65 per hour for out-of-court time (with an average of \$37/hr.). In some counties, payment is based on a flat, per-case fee. A speaker at one of the public hearings discussed problems she perceived as arising from such a pay arrangement. It was her belief that since such an arrangement does not provide the usual monetary incentive for an attorney to do a good job, too many court appointed attorneys simply do not make much of an effort to adequately represent indigent defendants when under such a pay arrangement. She went on to say that such court appointed

attorneys hardly ever see their indigent clients until the day they have to appear in court, and noted that most of these cases never go to trial. She contended that this is because the court appointed attorneys strongly encourage indigent clients to plea bargain, implying that some attorneys may find the situation more economical to themselves if they urge defendants to take a plea rather than spending more time preparing a case to go to trial.

This issue was recently discussed by a young attorney in an *Atlanta Bar Association Newsletter* article. She noted that attorneys appointed to cases through the Fulton County State Court are paid a flat fee of \$50 per client, "whether the client is charged with one count or fifty, whether the client pleads guilty immediately or requires a lengthy trial." (Fulton Superior Court has a flat fee of \$200.) She stated that in many such cases she had taken the office overhead costs, collect calls from clients detained in jail, and transportation to and from the courthouse far exceeded the fifty dollars she received from the case. It is her belief that, in Fulton County State Court, such losses "happen almost as a rule if the case goes to trial." As such, she contends that the flat fee pay structure presents attorneys with a "conflict of interest" in that there is an incentive to encourage the defendant to plead, in circumstances in which it would not be in the defendant's best interest.

RECOMMENDATIONS:

5. *Require the establishment of and adherence to uniform and equitable statewide standards of compensation.*
6. *Flat fees can serve as disincentives and hold potential for abuse, especially where the rate is the same for pleading or going to trial. Consequently, flat fees should be abolished. Instead, payment should be reasonably commensurate with work performed.*

Attorney Qualifications

Court-appointed attorneys are sometimes assigned to cases outside or beyond their level of expertise. A speaker at one of the public hearings expressed her concern about how court appointed attorneys are often "mismatched" to cases (e.g., a divorce lawyer may be assigned to an armed robbery case). She stated that a court appointed attorney's lack of experience in handling such cases means that the client's defense is automatically

compromised. A speaker at another public hearing expressed a similar view that the methods by which court appointed attorneys are assigned to cases is sometimes problematic. In her circuit, she said, attorneys practicing less than 15 years are automatically placed on the court list. For those practicing over 15 years, participation is voluntary. She believes that this effectively makes the most experienced attorneys significantly less accessible to the indigent.

RECOMMENDATION:

7. Each indigent defense program should establish a system which would appropriately match attorneys' qualifications with the cases they are being assigned. Specialized mandatory continuing legal education training should be required for attorneys providing indigent defense. Additionally, a mentor system whereby less experienced attorneys can work with experienced counsel to develop practical experience should be encouraged.

The GIDC guidelines regarding appointment of counsel include the following. "More difficult or complex cases should be assigned to attorneys with sufficient levels of experience and competence to afford adequate representation. Less experienced attorneys should be assigned cases which are within their capabilities, but should be given the opportunity to expand their experience under supervision." GIDC's Professional Education Center provides special training seminars concerning issues relevant to indigent defense. There is also a mentor program for indigent defense lawyers whereby attorneys with five or more years of criminal defense experience assist less experienced attorneys. The Commission commends these efforts and emphasizes the need to establish and maintain such resources for indigent defense attorneys.

Need for Increased Pro Bono and Volunteer Efforts

In light of the above inadequacies in our system of legal representation for indigent persons, it seems clear that all possible measures (including pro bono and volunteer efforts in addition to direct monetary funding) should be sought to try to alleviate some of the shortage of resources and to try to provide adequate counsel for those unable to afford legal representation. Recognizing the important role that pro bono and volunteer efforts can play, an attorney at one of the public hearings stated

that there are not enough lawyers who are willing to represent people on a pro bono basis. He said that law, like medicine, has become "too much of a business and not a service to people," and suggested that the Bar should do something more to get attorneys more involved. John Sammon, 1993-1994 President of the State Bar was quoted in the 1994 GIDC report to Governor as stating "[l]awyers who charge reduced fees or no fee at all in indigent cases should be applauded. Such pro bono work was bolstered by the Supreme Court of Georgia's expansion of Ethical Consideration 2-25, which calls all lawyers to donate a specific amount of free legal services."

One Commission member interviewed a Korean attorney concerning indigent defense issues as relate to the Korean community. The attorney indicated that pro bono work among Korean lawyers is virtually non-existent in that volunteerism is not a significant part of the Korean culture. He noted that for the most part, indigent Korean defendants find financial and other support through family, churches, and friends.

RECOMMENDATION:

8. The support of the State Bar should be solicited to further encourage increased pro bono services.

Fulton County has a large pro bono program designed as a way of helping assure quality legal representation to criminal defendants. This program, 100 Lawyers for Justice, was formed by the State Bar of Georgia, the Gate City Bar Association, the Atlanta Bar Association, the Georgia Association of Criminal Defense Lawyers, the Georgia Association of Black Women Attorneys, the Atlanta Council of Younger Lawyers, and GIDC. Attorneys who volunteer for this program receive six hours of continuing legal education training and are assigned to a mentor in case they need any assistance.

RECOMMENDATION:

9. Indigent defense resource networks composed of academic institutions and community organizations should be established to secure interns, volunteers, and other assistance to aid in the delivery of services. The assistance of law schools should be actively sought to recruit interns and qualified volunteers.

Indigent Defense and Immigration Status

Allegations were raised that immigration/alien status predisposes non-citizen indigent defendants to receive inequitable treatment in many stages throughout the judicial system. At the public forum with the Gainesville Hispanic community, some individuals stated that officials with pretrial services tell Hispanics that they are not eligible for a public defender if they are undocumented aliens. Their immigration status is often a significant factor in how their cases are processed in the criminal justice system. As a result, they may be: more likely to remain incarcerated pending trial; be unable to obtain bond; encounter delays in the appointment of counsel. Particularly in less serious cases, alien defendants seemed much more likely to remain incarcerated than other defendants charged with similar offenses.

RECOMMENDATION:

- 10. Establish guidelines to assure that alien status alone is not an independent basis for delay in processing cases. Encourage court personnel to become knowledgeable about the effect of federal immigration status on court procedures.*

Section 2: Legal Representation in Civil Cases and Other Legal Matters

Georgia Legal Services and the Atlanta Legal Aid Society are the two primary organizations providing legal representation in civil and other legal matters to persons with limited economic means in this state. These organizations provide free or low cost legal counsel on a very wide array of matters. For 1994, Atlanta Legal Aid noted that its offices had handled over 16,000 cases in five metropolitan Atlanta counties (Clayton, Cobb, DeKalb, Fulton, and Gwinnett); Georgia Legal Services, which covers the remainder of the state, stated its offices had handled over 18,000 cases.

Given the disparately large percentage of minorities in Georgia near or below the poverty line, (as was noted at the beginning of this chapter), it is clear that the number of minority persons in need of the services provided by Atlanta Legal Aid and Georgia Legal Services are likely to be disproportionately large. For example, a Georgia Legal Services attorney stated at one of the public hearings that his office handles around 3000 cases per year; 70% of the clients are female, 50% are black.

Regarding perceptions concerning the role of limited financial resources and minorities' access to the courts in civil matters, the results of the Commission's Attitude Surveys indicated that 65% of minority attorneys held the perception that the cost of litigation is more likely to act as a deterrent for minorities than would be the case for non-minorities with similar financial situations regardless of the individual's level of income. In contrast, however, only about 20% of non-minority attorneys as well as superior and state court judges felt that minorities shared this perception.

Georgia Legal Services and Atlanta Legal Aid receive federal grants from the federal Legal Services Corporation. Nearly half of Atlanta Legal Aid's 1994 budget and over 78% of the 1994 budget for Georgia Legal Services came from the Legal Services Corporation. The remaining funds for both organizations came through grants and donations from public and private organizations and foundations as well as from individual contributors.

In addition to the attorneys and support staff employed by Atlanta Legal Aid and the Georgia Legal Services, assistance in handling cases is obtained through volunteer efforts of attorneys. Georgia Legal Services indicated that around 6% of their cases in 1994 were handled by attorney volunteers around the state. Atlanta Legal Aid is assisted by attorneys from the Atlanta Volunteer Lawyers Foundation, the DeKalb Volunteer Lawyers Foundation, and the Clayton Bar Association. The Gwinnett Bar Association also provides office space and phone support for Atlanta Legal Aid's Gwinnett County Pro Bono coordinator. Additional attorney involvement in these laudable efforts is strongly encouraged.

Atlanta Legal Aid and Georgia Legal Services not only train their own attorneys and staff but also provide training for attorneys volunteering their services. Atlanta Legal Aid, for instance, has designed and conducts courses related to areas of specific relevance to their clientele. Additionally, Atlanta Legal Aid pays for the continuing legal education credits volunteer attorneys earn. This is seen as a means of not only assuring the quality of those providing pro bono services but also as a means of recruiting new volunteers.

A Georgia Legal Services attorney speaking at one of the public hearings indicated that the Chatham county pro bono program provides for retired attorneys (who remain in active status with

the Bar) to help with their caseload. It was noted that despite this help, their office still cannot accommodate all the people who need their services due to the serious lack of resources. As an additional means of trying to cope with excessive caseloads, a Georgia Legal Services attorney recommended adopting a rule allowing retired attorneys on inactive status to have limited practice in Georgia courts. This could help ensure accessibility to the courts for minorities and the poor.

RECOMMENDATION:

11. All bar associations should encourage increased participation in Atlanta Legal Aid and Georgia Legal Services to provide pro bono or low cost legal assistance to persons otherwise unable to afford such counsel.

The Law School Legal Aid Agency Act of 1967 (O.C.G.A. § 15-20-2) states that it is “in the public interest to promote the availability of legal aid to indigent persons” by having law schools establish and operate legal aid agencies. This law provides for third year law students to participate in these agencies “as a form of legal intern training and service that will provide competent and professional legal counsel to indigent persons.” This Act and its provisions should be used to the fullest extent to augment existing programs providing legal assistance to indigent persons. For example, Atlanta Legal Aid receives part-time assistance from such clinical programs at Emory and Georgia State University Law Schools.

Both Atlanta Legal Aid and Georgia Legal Services have made special efforts to assist the low income Hispanic residents of Georgia. For example, the Atlanta Legal Aid’s Spanish-speaking attorney has worked for the last two years with the Latin American Association, a non-profit social services agency, in establishing the “Latin American Association Legal Taskforce.” This taskforce is intended to help non-English speaking Hispanics obtain access to affordable or pro bono legal assistance. As of January, 1995 the legal taskforce had 28 member attorneys and two interpreters. An Atlanta Legal Aid senior staff attorney noted, however, that the demand for these services continues to far exceed their available resources. He stated that in an effort to address some of these demands, Atlanta Legal Aid, the Latin American Association, and Catholic Social Services of Atlanta are collaborating to secure funding to hire additional staff.

RECOMMENDATION:

12. Resource networks composed of attorneys, academic institutions, and community organizations to secure interns, volunteers, and other assistance should continue to be used to their fullest extent to aid in the delivery of legal services to racial and ethnic minorities with limited financial resources.

VI. CRIMINAL JUSTICE SYSTEM

This Nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened.

John F. Kennedy
Televised speech, June 11, 1963

A number of national studies have yielded startling statistics regarding the high proportion of minorities involved in the criminal justice system. In a 1990 study, the Sentencing Project reported that, nationally, the total number of black males aged 20 to 29 who were under some control by the criminal justice system was greater than the total number of similarly-aged black males enrolled in college. Of all black males in this age range, 23% were either in prison or jail, or on probation or parole. The study stated that 6.2% of whites and 10.4% of Hispanics in the same age range were similarly involved in the criminal justice system. A 1993 *Sociological Quarterly* paper by J. Kramer and D. Steffensmeir reported that blacks represented 13% of the U.S. population and 50% of those persons in prisons. In the proceedings of the "Studying Race and Gender Bias in the Criminal Justice System" workshop at the 1993 BJS/JRSA National Conference on Enhancing Capacities and Confronting Controversies in Criminal Justice, it was noted that while blacks account for approximately 12% of the U.S. population they represented 64% of robbery arrests, 55% of homicide arrests, and 32% of burglary arrests.

The situation in Georgia parallels the national picture. Despite the fact that minorities constitute 29% of Georgia's population, minorities represented nearly 78% of violent crime arrests and 64% of property crime arrests according to a 1993 Georgia Uniform Crime Reporting Program summary report of arrests

statewide. For other (non-index) crimes, minorities comprised 54% of arrests and non-minorities constituted 46% of arrests. In 1993, roughly 70% of the criminal cases tried in Chatham County Superior Court involved black defendants, yet only 38% of that county's residents are black. A 1994 assessment of the Fulton County Jail indicated that 90% of the jail's occupants were minorities, most of whom were black.

Disproportionately large percentages of minorities were involved through to the end of the justice process as well. A Department of Corrections inmate statistical profile report indicated that at the beginning of 1994 there were 27,947 inmates incarcerated in Georgia correctional facilities (excluding jails). Males comprised 93.9% of the inmates; 68.5% of the male inmates were minorities. Of the female inmates, 65.1% were minorities. The Department of Corrections reported that at that time there were 135,107 individuals on probation, 81.1% of whom were male; 50.2% of the male and 52.8% of female probationers were minorities.

Given the large proportion of minorities involved in the criminal justice system, it follows that any differential handling of cases involving minority defendants will affect a substantial number of minority persons. With this in mind, the Commission examined a number of issues in which there had been allegations or indications of perceived and/or actual systemic racial and ethnic bias. The findings of the examinations, along with suggested recommendations for addressing the problems identified, are detailed below.

Section 1: Distrust of the Legal System

The distrust of the criminal justice system held by many racial/ethnic minorities often begins at the initial stages of the system with distrust or fear of law enforcement officers and continues throughout the remaining stages of the criminal process. For example, a 1993 national Gallup poll (in *The Gallup Poll Monthly*, December 1993) asked whether respondents perceived police protection in black neighborhoods as better, worse, or the same as police protection in white neighborhoods. Forty percent of white respondents believed that police protection in the two neighborhoods was the same while 41% felt that protection was worse in black neighborhoods. The black respondents, however, held a distinctly different perception, with

74% believing that police protection is worse in black neighborhoods.

Distrust serves to propagate negative feelings and perceptions of the legal system and to discourage minorities from seeking help through the court system. At one of the public hearings, a staff attorney with the NAACP Legal Defense and Education Fund, in remarking on the lack of faith that minorities have in Georgia's justice system, stated that minorities hold the perception that they are not going to receive justice and that they will be treated unfairly because of their race and because of being poor.

PROBLEM STATEMENT:

There is a need to foster trust in the legal system by minorities. Better communication with and cultural understanding of ethnic minorities is likewise needed.

Although the Commission did not make any specific inquiries in the area of law enforcement, some anecdotal evidence was presented on this topic at public hearings and forums. A member of the Judicial Nominating Commission stated at a public hearing that in his opinion, law enforcement officers do not have as much interest in solving crimes where the victim is black as they do when the victim is white. He went so far as to say that "a black person is in more trouble for stealing from a white person than [for] killing another black person." The president of the Georgia Association of Black Women Attorneys (GABWA) expressed a similar belief that there is significantly less care and attention given to black on black crimes than is given to crimes involving white victims.

Also pertinent to the development of trust in law enforcement by minorities is the ability of law enforcement officers to communicate with ethnic minority persons, many of whom may speak little or no English. Information obtained at public hearings and public forums indicated that law enforcement officers often lack the knowledge and training of how to communicate with ethnic minorities, placing such minorities at a greater disadvantage and risk than others in similar situations. An attorney at one of the public hearings stated that the police in his area often automatically assume that the Hispanic person is the culprit or the one at fault. The officers tend to discount the testimony of anyone who does not speak English, and will often take the statements of all parties involved except for those who

speak a different language. It was stated that this is particularly problematic in traffic accident cases; what happens is that only one side of the story gets told. It was suggested that at other times, police have considered a Hispanic person trying to tell his/her story as interfering in their investigation. Some such cases result in obstruction charges. It seems clear that such incidents would significantly inhibit ethnic minority persons from developing trust in law enforcement and in the criminal justice system as a whole.

RECOMMENDATION:

- 1. Law enforcement agencies should be encouraged to increase their efforts at establishing trust and communication between minority communities and themselves.*

Community policing efforts are a means of fostering positive interaction between law enforcement and community neighborhoods by assigning specific officers to consistently work in close contact with a specific neighborhood or area. However, the officers' career advancement usually means that these officers, who may have built substantial trust among the community members, will be reassigned to different areas and/or positions. As a means of building trust, law enforcement officers assigned to work in minority communities should be allowed to remain working there to establish and maintain a relationship with the community.

Section 2: Pre-trial Release

In the course of its public hearings, the Commission received anecdotal evidence asserting disparately burdensome impact on racial and ethnic minorities caused by the court system's pre-trial release process. In the course of its study, the Commission identified two basic issues which might yield potentially disparate outcomes in pre-trial release for minority defendants. The first concerns whether there is differential treatment of minority defendants in comparison to the treatment of non-minority defendants; in short, whether minorities are less likely to be given attainable pre-trial release options. The second issue concerns differential impact on minorities, not because of differential treatment by the court system, but because the economic hardships faced by a disproportionately large number of minorities prevents them from securing release in a pre-trial

release system that is predominantly monetarily based. This type of disparate impact on minorities can occur despite being provided equal treatment by the courts (*i.e.*, same bond amount set for defendants charged with a specific crime under specific circumstances, *regardless of race or ethnicity*).

The Commission's Attitude Surveys assessed the perceptions held by judges and attorneys concerning pre-trial release. A significant proportion (79%) of minority attorneys having a criminal practice (prosecution or defense) held the perception that minority defendants are more likely to remain in custody prior to trial than are non-minority defendants charged with similar criminal histories and similar community ties. Among non-minority prosecutors and criminal defense attorneys, however, only 35% felt that minority defendants are more likely to remain in custody prior to trial. Between 30% and 38% of superior court, state court, and magistrate court judges likewise were of the opinion that minority defendants are less likely to obtain some form of pre-trial release.

A great number of these attorneys and judges attributed this disparate impact to minority defendants' being less likely to have the financial resources to make bail. For example, one magistrate wrote that "socioeconomic status and involvement of private counsel affects bonds—especially [the] speed and availability of" being released on one's own recognizance. Comments from the Attorney Survey included:

White male: "Minority defendants often remain in jail because of inability to make bail—this is economic more than racial in nature."

Black male: "Objectively viewed, the disparate result may come from the general economic differences between the majority and minority communities."

White male: "More minorities remain incarcerated prior to trial because they can't make bond."

White male: "Disparity in treatment is more a matter of the social class, (*i.e.*, \$) than minority status as to victims and defendants."

At the Savannah Public Hearing an assistant district attorney from the Ogeechee Judicial Circuit stated his belief that bias in the court system is financially based rather than racially founded. He contended that poor people from impoverished

backgrounds are more likely to end up in court, regardless of their skin color.

When asked specifically whether they believed that bail is set higher for minorities than for non-minorities (with all things being equal), between 88% and 95% of the judges voiced disagreement. Nearly 64% of the non-minority attorneys felt that the bond amount for minority defendants is set no higher than for non-minority defendants charged with the same crime. Roughly 54% of minority lawyers stated that in their opinion bail is set higher for minority defendants. An even greater percentage (71%) of minority attorneys believed that minority defendants are less likely to be released on their own recognizance than similarly situated non-minority defendants. Only 24% of the non-minority attorneys and from 4% to 19% of the judges agreed that such a racial disparity exists in terms of a defendant's release on his/her own recognizance.

In terms of whether minority defendants unable to post bail are sentenced more severely than would be non-minority defendants, approximately 66% of non-minority attorneys reported believing that there is no difference in the severity of sentencing based on a defendant's inability to post bail. Ninety-two percent of superior court judges and 87% of state court judges held that there is no racially disparate sentencing stemming from minority defendants' inability to post bail. In stark contrast, only 17% of the minority attorneys shared this view.

Although a probation officer from the Department of Corrections and a Georgia Justice Project attorney stated their belief at public hearings that minorities receive disparate treatment regarding bail amounts, denial of bond, and denial of bond reduction, the Commission generally found little evidence that Georgia's courts make decisions on pre-trial release that are based on the defendant's race or ethnicity. Considerably more information indicated that, despite parity in the setting of bail amounts, minorities are at a distinct disadvantage in securing pre-trial release because of differentially limited financial resources. Given the disproportionately high number of minorities involved in the criminal justice system coupled with the limited financial resources available to many minorities, it seems clear that there is significant potential for the possibility of differentially negative outcomes for minority defendants in terms of pre-trial release.

PROBLEM STATEMENT:

There is a need for improved pre-trial release policies to obviate potentially disparate effects for minorities.

In Georgia, pre-trial release on bail usually involves monetary payment to a commercial bondsman, usually at the rate of 10% of the money bond amount set by the court. Such payments differentially burden the poor who come into contact with the court system as criminal defendants. To the extent that so many of the poor and economically disadvantaged are minorities, members of these groups are disproportionately burdened by the commercial bail bond system. The money payment to the bondsman is not routinely refundable to the defendant upon appearance at court, but is earned as the fee by the bondsman / bonding company for standing as the surety for the defendant's pre-trial release.

Money payments to bonding companies place a substantial burden on minorities with limited financial resources. These payments might otherwise be allocable toward the expense of a criminal defense lawyer, not to mention other financial needs of a defendant's family. In many cases the defendant simply does not have the financial wherewithal to post the set bail amount. Thus, although bail may be set in cases involving minority defendants, if they are unable to post bond the opportunity for pre-trial release has in essence not been accessible to them. Securing release pending disposition of the case can be of extreme importance, especially in terms of maintaining his/her income (i.e., the defendant cannot afford to miss work or to lose his or her job).

Additionally, the inability to make bail and attain pre-trial release invariably prolongs pre-trial incarceration. Extended pre-trial incarceration could also serve to stimulate plea bargained convictions, particularly to lesser offenses than those originally charged, and especially when the dispositional result is credit for time-served. Such incarceration may impede the ability of a criminal defendant to consult with a lawyer, or to assist a lawyer in making a full investigation and a replete defense to criminal acts charged.

Testimony was received at public hearings to this effect. An attorney from Columbus alleged that bond for young black males is set significantly higher than for whites charged with more serious offenses. He stated that these high bonds force black

defendants to sit in jail for six months or longer awaiting trial. After such a lengthy period in jail, he contended, prosecutors encourage the defendants to plead guilty in return for release for time served. Even if a defendant may be innocent, he/she may be inclined to plead guilty just to get out of jail without fully understanding the ramifications of having a criminal record. An attorney from the Georgia Justice Project raised similar concerns.

RECOMMENDATIONS:

2. Each circuit should be directed to develop and implement (pending the approval of the Supreme Court) a formal pre-trial release policy, specifying factors used in determining eligibility for bail. Additionally, the use of alternatives whenever possible should be strongly encouraged. These alternatives include (but are not limited to):

- i. posting to the court a refundable 10% of the face value of an unsecured bond;*
- ii. release on own recognizance (OR);*
- iii. bail based on financial resources ("ability to pay");*
- iv. pre-trial diversion;*
- v. use of driver's license as bond for misdemeanors.*

3. Where effective pre-trial release programs exist or are created, release on own recognizance (OR) or supervised OR should be the presumptive form of release for certain offenses as specified in the above-mentioned pre-trial release policy that each circuit should be directed to develop and implement.

Currently, the Uniform Rules for the Superior Courts allow for the establishment of county pre-trial release programs under the authority of the superior court judges of that circuit. This rule provides general structural guidelines for release alternatives under such programs, including details on posting a refundable 10% bail to the court. It also stipulates that administrative and investigative personnel are necessary to operate pre-trial release programs. The Department of Corrections also has the authority (under Article 5 of O.C.G.A. Title 42) to establish pre-trial release and diversion programs in a county for which the superior court judges, district attorney, solicitor, and sheriff of that county give approval.

A number of counties (*e.g.*, Chatham, DeKalb, Fulton, and others) have established pre-trial services programs. Cobb County initiated the first pre-trial release program of its kind in Georgia. In its 1993 annual report, the Cobb County Pre-trial

Services Program noted the rationale for starting the program twenty years earlier as follows:

Firstly, it was believed that the traditional bail system only met the needs of those persons financially able to acquire release either through a commercial bonding company, posting a cash bond, or real estate. Secondly, many of the inmates utilizing the services of commercial bonding companies, simply could not afford the expense. Monies normally used for basic necessities such as food, housing, clothing, and other family needs, were applied towards bonding fees. Thirdly, those who were unable to afford bond remained in custody at the expense of county government and its citizens.

This program has been quite successful, and has been recognized nationally for its achievements; as such it has "served as a model program for alternatives to incarceration."

Immigrants, refugees, and foreign nationals face additional considerations with regard to being released from incarceration pending trial. Among these considerations are flight risk and immigration status. A member of the Latin American Association Legal Task Force explained that the policy of Georgia bondsmen since 1984 has been to refuse bond to foreign nationals even if the defendant has property in the county. Out-of-state bondsmen will sometimes take such cases, but it often takes a long time for an individual to get any of his or her deposit back from such companies. She further stated that INS can require an additional bond if the defendant is an illegal alien. She went on to say that permanent residents have most of the rights of citizens, and that sometimes an out-of-state bondsman will assist.

Having all judges within a given circuit, regardless of the level of court follow the same set of rules and guidelines for pre-trial release is of great importance in ensuring equal opportunities for release pending trial. Whether a circuit establishes a formal pre-trial release policy based on the Cobb County model or on any other formal basis, those practices must be imposed consistently and equally to all persons eligible for some form of pre-trial release, regardless of their racial and ethnic background. Furthermore, adequate funding is required to ensure that pre-trial release programs have adequate staffing to conduct the necessary screening and supervision.

Section 3: Timely Appointment of Counsel

As noted in the *Legal Representation for Persons Unable to Afford Private Counsel* chapter of the present report, minorities represent a disproportionately large number of persons with very limited financial means. When such individuals are drawn into the criminal justice system as defendants, they typically are financially unable to retain a private attorney and must therefore rely on court-appointed counsel.

PROBLEM STATEMENT:

Delays in the timely appointment of counsel in indigent cases, most of which involve minorities, could result in defendants being unduly detained and may impact on the individual's ability to mount an adequate defense.

Through public hearings, public forums, and the forum with inmates at the correctional institution it was found that attorneys are sometimes not appointed to cases until just before the case is to be tried. One inmate serving a life sentence for murder claimed that he had sat in jail for four months before ever seeing an attorney or having a hearing. In the last month prior to his trial, he stated, the attorney had visited him three times. Another inmate said that while several attorneys had been "appointed," all had declined to take his case. Finally an attorney was appointed three days before the trial, at which time the attorney said that he would do his best but that there simply was not enough time to adequately prepare. Additionally, there have been allegations that in some areas defendants in misdemeanor cases are not being informed of their right to counsel.

RECOMMENDATION:

4. Steps should be taken to ensure that defendants are always made aware of their right to counsel, and that attorneys are appointed as early as possible to provide for possible pre-trial release or bail and to have sufficient time to prepare an adequate defense. Further, when the defendant does not qualify for a court appointed attorney and proceeds pro se, the court should ensure that the defendant has the opportunity to request and obtain a bench trial.

In that a large number of indigent cases involve minority defendants, lack of adequate time to prepare a defense impacts disproportionately against minorities. Early appointment of

counsel will help to ensure that the defense counsel has adequate time to prepare a defense and that defendants will not remain in jail unnecessarily prior to trial.

In order to avoid any confusion and misunderstanding on the part of indigent defendants, it is important for court appointed counsel to clearly identify themselves as such and to explain to the defendant what their role as defense counsel entails. There was some concern that certain jailed defendants may have mistaken their initial meeting with their appointed attorney as simply someone asking whether the defendant would like to have a lawyer provided for them.

In its 1994 annual report the Georgia Indigent Defense Council (GIDC), acknowledging the importance of early appointment of counsel, recommended: 1) a Speedy Trial Act requiring that an in-custody defendant be indicted within 10 weeks of arrest; 2) preliminary hearings should be held for all in-custody defendants within 10 days of incarceration; and 3) at request of defense counsel, require an early pre-trial conference be held between the defense and the prosecution to determine if a guilty plea or other non-trial disposition of case is possible.

Section 4: Fully Understanding the Ramifications of Pleas

Many minority defendants do not adequately appreciate the potential short- and long-term consequences of being found guilty of the offenses for which they are charged. This factor, combined with a lack of understanding of their legal alternatives and options, could induce many minority defendants (whether guilty or not) to make guilty pleas that may not be in their best interest. Information gathered at public hearings and public forums indicates that often many racial/ethnic minority defendants will plead guilty, sometimes even when they may have what they perceive to be a valid defense. Many may believe that if they plead guilty up front they will receive a lighter sentence than if they go to trial. This may be especially true for misdemeanor offenses, for which minority defendants may plead guilty under the presumption that they will simply have to pay a fine and then the entire matter will be behind them. Many who are incarcerated may plead guilty in an effort to get out of jail (e.g., for "time served").

PROBLEM STATEMENT:

Some anecdotal evidence suggested that racial and ethnic minorities are more likely to plead guilty (even though they may perceive they have a valid defense) without fully understanding the immediate and long-term consequences.

At one public hearing, a member of the Atlanta Bar Association's Subcommittee on Racial and Ethnic Bias told of experiences with a probation officer who contends that minorities in general tend to plead guilty to charges even when they believed that they had not in fact committed the offense, feeling that they basically had no options. In her view, minority defendants generally believe that regardless of the facts, they will be found guilty, so their best option is to extricate themselves from the situation as quickly as possible. A Catholic priest speaking at one of the public forums explained that many people in the Hispanic culture also assume it is best to plead guilty rather than to stand trial, even if they believe they did not commit the offense. They expect to merely pay a fine and leave. He explained that many migrant workers are in this country illegally and will plead guilty rather than stand trial, at which time their status here might be questioned. The president of the Hispanic Alliance in Gainesville also noted that most Hispanics will go ahead and plead guilty, even if they did not commit the offense, assuming that after doing so they will no longer be troubled by the matter. Their attitude is that even if they were to fight the charge they would receive the same outcome in the end, resulting in additional lost time and money.

These individuals generally have very little understanding of the immediate and long-term consequences of pleading guilty. They often assume that they will only have to pay a fine, when in fact they may be incarcerated. Fines are generally dramatically underestimated. There is often little awareness of additional concurrent penalties (e.g., DUI school and community service). Furthermore, these individuals typically think that once the fine is paid the matter will not come up again. They fail to consider the potential ramifications that pleading guilty now may have later if they have any future convictions (such as being designated as a habitual offender or career criminal).

RECOMMENDATIONS:

5. *Attorneys should be directed to make all efforts to carefully explain to their clients the consequences of pleading guilty, ensuring that prior to making a plea the defendant makes an intelligent calculation of actual risks and benefits. Also, defendants should be cautioned about the impact a guilty plea would have on any future convictions (e.g., if a defendant pleads guilty to DUI, the attorney should explain what will happen on a subsequent DUI conviction).*

6. *In order to better ensure that defendants are adequately informed of all the consequences of guilty pleas, continuing legal education classes in criminal law and procedure addressing these issues should be part of the requirements for any attorney who makes criminal law a part of her/his practice, as is now required for trial attorneys to participate in mandatory continuing legal education trial seminars.*

7. *The state should provide adequate public funding for misdemeanor and felony defense services so that individuals being charged with offenses receive competent representation and are fully aware of the consequences of pleading guilty to offenses with which they are charged.*

These issues are especially important with regard to first offender status and to “enhanced” offenses (e.g., habitual violator). Care should be taken to ensure that these individuals fully understand their sentences and the conditions of probation with respect to requirements such as community service, DUI school, etc., including understanding the consequences of failing to meet these conditions. Both judges and attorneys should recognize and should facilitate the defendant’s full understanding of her/his situation.

Also, *prior to pleading guilty*, defendants should be fully informed of how having a conviction on their record will affect their lives, including the potential threat of an aggravated sentence upon a subsequent conviction. They should be made aware of how convictions will affect their voting rights, their ability to keep their driver’s license, their credit and ability to get loans, and their ability to become employed. This sentiment was echoed at a public hearing by the president of the Columbus branch of the NAACP who stated that defendants often take plea bargains for time served without understanding the impact of a conviction on their record. For example, many defendants don’t

realize that certain convictions may hinder them in obtaining future employment.

Section 5: Immigration and Naturalization Issues as Relate to Pleas

Additional issues must be addressed when the defendant is an alien (legal or illegal), refugee, immigrant, or naturalized citizen because guilty pleas for these individuals carry not only all the above-mentioned ramifications but also include immigration and naturalization consequences as well. All aliens, including lawful permanent residents, are subject to immigration consequences if they are found to have violated immigration laws [8 U.S.C. § 1255A(a)(B)(b)(1)(C)(ii); 8 U.S.C. § 1160(a)(3)(B)(ii)(II)]. Permanent residents, like all other aliens, may be deported as the result of such violations. The broadest category of criminal activity for which such immigration consequences may result are those considered to be crimes of "moral turpitude," for which the alien must have been sentenced to incarceration for a period of a year or more. This category encompasses a very broad array of offenses, including but not limited to the following: crimes of violence; weapons violations; drug sales and trafficking offenses; smuggling; transporting or harboring aliens; illegal entry; perjury; marriage fraud; and false statements and material misrepresentations. For example, the U.S. Department of Justice and the Immigration and Naturalization Service reported that in 1993 the U.S. deported 18,870 aliens for convictions for criminal or narcotics offenses. This represented over 51% of the total 36,686 aliens deported that year. Given the increasing number of immigrants and refugees coming to Georgia, there are a growing number of court cases (predominantly criminal) involving these persons.

The judges and attorneys included in the Attitude Surveys were of the overall opinion that attorneys (both defense and prosecution) generally have little knowledge of the immigration and naturalization consequences of pleading guilty to state felonies and misdemeanors, although the attorneys and judges tended to believe that defense attorneys may be slightly more aware of these consequences. Survey respondents also generally believed that defendants in such situations typically are not adequately informed of immigration/naturalization consequences. The overwhelming majority of both minority (85%) and non-

minority (73%) attorneys surveyed felt that non-U.S. citizens are not adequately advised of the immigration consequences of pleading guilty to a felony. Only about a quarter of the attorneys thought that these individuals do receive adequate advisement. Twenty-seven percent of judges believed that they do receive adequate advisement concerning immigration consequences while just under half felt that non-U.S. citizens are not adequately advised of the immigration consequences of pleading guilty to a felony (the remainder voiced no opinion).

PROBLEM STATEMENT:

There appeared to be a general lack of knowledge concerning immigration and naturalization consequences of naturalized and non-U.S. citizens pleading guilty to state offenses.

Many non-U.S. born defendants who are incarcerated agree to release on "time served" or enter a plea expecting probation without knowing that certain misdemeanors and most felonies result in an automatic finding of deportability under federal immigration law. Even for permanent residents, the Immigration and Naturalization Service (INS) can still place a hold on the defendant for certain indictments. For certain offenses, the INS can revoke the citizenship of naturalized citizens.

RECOMMENDATIONS:

8. Public defender's offices and firms contracting for indigent defense should be required to have at least one of their attorneys receive training in immigration/ naturalization laws and regulations as they pertain to criminal matters. Immigration and naturalization training should be added as an optional curriculum in accredited mandatory continuing legal education and Bridge the Gap training, and should be required of attorneys appointed by the court for indigent defense in counties/circuits with significant ethnic communities.

9. Additionally, courts should be encouraged to inquire about a defendant's understanding of immigration and naturalization issues as an element of voluntariness when assessing the legal basis for a plea. The feasibility of adding an immigration question to the plea sheet to accommodate cases involving non-U.S. citizens should be considered.

Defense counsel is responsible for ensuring that the defendant is aware of and understands the immigration consequences of a

plea. Inquiries by the court are to determine whether the defendant understands these consequences and has made an informed decision. Absent a positive confirmation, the court may, at its discretion, allow more time, grant a continuance, place the case on a trial calendar, or proceed directly to trial as the court may decide based on its sound discretion. Implementation of such procedures may best and most efficiently be accomplished through the Uniform Rules.

It should be noted that simply adding an immigration question to the plea sheet will not necessarily ensure that non-English speaking defendants actually understand the immigration consequences of a plea. As the Gainesville Hispanic Alliance president noted, plea waiver forms are available in both English and Spanish. However, she felt that simply handing a defendant a piece of paper detailing their rights and asking them to read it is often insufficient because of the relatively high number of immigrants who cannot read adequately enough to comprehend the waiver form. She indicated that the average Hispanic in that area has a 6th grade education; even if they are able to read the form, they do not understand our justice system and its legal terms. As a representative of the Korean Community Service Center expressed at a public forum, even if an interpreter translates for a defendant the actual words on the waiver form, the interpreter may not be able to adequately explain what these concepts really mean in a short period of time.

Section 6: Lack of Diversity in the Judicial System Workforce

As was noted in the earlier Diversity in the Work Force chapter, the racial composition of the bench and the district attorneys' and solicitors' offices does not reflect the demographics of Georgia's population. In addition to the concerns and issues discussed in that chapter, a lack of diversity has particular impact on perceptions of the criminal justice system. The large number of minority defendants being tried and sentenced by white court officials strongly contributes to the perception that the criminal justice system is biased.

PROBLEM STATEMENT:

Perceptions of the equality of the justice system are affected by the lack of diversity in district attorney, solicitor, and public defender offices.

Information from public hearings, coupled with the Commission's Employment Survey, indicated that the proportion of minorities employed in district attorneys', solicitors', and public defenders' offices is typically not reflective of the demographics of their circuits/counties. An inmate participating in the correctional forum indicated that at his trial everyone in the court except himself and his attorney were white. Another inmate stated that he felt it was unfair that when the robbery victim was asked to identify the offender, he was the only black person in the room other than two black individuals sitting on the jury. At a public forum in Gainesville, the Hall County SCLC president made the comment that "the whole courthouse is white except for the defendant." An assistant district attorney from the Ogeechee Circuit stated at a public hearing that the distribution of the court staff in that area is overwhelmingly white, which tends to give the perception of racial bias in the courts.

RECOMMENDATION:

10. District attorneys' and solicitors' offices, as well as public defenders' offices, should be encouraged to increase efforts at hiring racial and ethnic minority personnel throughout all employment levels in their offices. The Implementation Committee, in conjunction with the Prosecuting Attorneys Council and the Georgia Indigent Defense Council, should periodically collect data concerning the composition of the workforce of these offices to determine if it is moving toward a closer reflection of the demographics of the state.

Although certain offices have made efforts at increasing the diversity of their employees, prosecutors' offices had relatively fewer minority employees than did public defenders' offices. In addition to making more of these job opportunities available to minorities, increasing the diversity of these office staffs can have a direct positive impact on perceptions of the legal system. Increased diversity in the prosecutors' offices better facilitates the perception of equal justice in that minority defendants, witnesses, and victims see that there is minority involvement in the meting out of justice rather than being perceived as being dictated by white males. Diversity in the public defenders' offices could also afford defendants with a feeling of shared values, common cultural background, and a better sense of being understood. This might provide defendants with a greater sense of trust and confidence in their defense.

Section 7: Inappropriate References to Race or Ethnicity

In addition to testimony from public hearings, the Commission's Attorney Attitude Survey indicated that unnecessary and inappropriate references to race and ethnicity have been made during criminal trials. Some of these comments were noted as likely having been inadvertent whereas others were perceived as blatantly improper. The most extreme example, for instance, came from testimony received from the director of the Southern Center for Human Rights, who stated that he knew of four instances of court-appointed attorneys having on the record made such comments about their own black clients. Attitude Survey comments from attorneys included:

Black female: "On voir dire, my opposing counsel asked another black female if she identified or admired me as a successful black female and therefore would find it difficult to not be biased. I felt this question was inappropriate and tainted the entire panel. My client was a governmental agency and the issue involved property values not race."

White male: "While observing a trial in [an Atlanta-area county], I heard a black female judge—in the presence of the jury—say, 'We will now break for lunch. I invite all of you to join us downstairs for the MLK Day luncheon. It is wonderful that we can finally be judges and lawyers.' The lawyers on one side were black and those on the other side were white."

Multiracial female: [stated having heard another attorney, in referring to his client, state] "My boy wasn't there . . ."

PROBLEM STATEMENT:

References to race and ethnicity are inappropriate and evoke detrimental stereotypes.

Although it may be completely unintentional, references to race, ethnicity, religion, etc. could have a deleterious effect for defendants because of racial stereotypes and connotations. The evocation of such connotations by way of references to race and ethnicity have been known to be used by attorneys (both prosecution and defense) in a tactical sense in the presenting of their case.

RECOMMENDATION:

11. All judges, attorneys, and court personnel should not make any references to race, ethnicity, religion, or other such

factors unless directly relevant and necessary for the case at hand.

It should be incumbent upon judges to ensure that such references are not permitted in their courtrooms.

Section 8: Victim Witness Assistance Programs

Minorities are by no means limited to the offender end of the criminal justice system. Rather, minorities also comprise large proportions of victims as well. A 1990 Bureau of Justice Statistics report stated that nationally between 1979 and 1986, blacks were more often victims of violent crime than were whites. Furthermore, there was a greater likelihood that weapons were involved in violent crimes against blacks than against whites. The report also noted that not only were blacks more likely to be physically attacked during violent crimes, they were also more likely than whites to be injured and tended to sustain more serious injuries.

The Attitude Surveys contained questions designed to assess the perceptions that judges and attorneys held regarding victim and witness issues. Forty-three percent of minority lawyers believed that prosecutors as less likely to make good faith efforts to notify minority victims of sentencing hearings than they are to notify non-minority victims. About 57% of non-minority attorneys and 67% of superior court judges disagreed, and maintained the point of view that there is no such racially-based differential effort at victim notification on the part of prosecutors.

With respect to opportunities for oral impact statements by victims at sentencing, 68% of non-minority attorneys and 89% of superior court judges maintained that there is no racial differentiation in judges' likelihood of providing such opportunities to non-minority and minority victims. The minority attorneys who responded were evenly divided in their perceptions: 25% felt that judges are more likely to provide opportunities for non-minority victims and 26% thought that there was no such disparate treatment on the part of judges (the remaining respondents voiced no opinion).

PROBLEM STATEMENT:

Adequate services are needed for the large proportion of minority victims and witnesses.

A large proportion of victims and witnesses of crime are minorities. These individuals are entitled to be kept informed of what is happening with the case in which they are involved. However, their access to such information and assistance is often restricted by factors such as limited finances, lack of transportation, and little understanding of how to obtain case information on their own. These individuals are often very reluctant to cooperate as witnesses because they fear reprisals; many live in the communities where the offenses took place and where the offender and his/her family reside.

RECOMMENDATIONS:

12. Victim witness services programs should be developed and implemented, making sure that they are tailored to accommodate the racial and ethnic minority communities of each circuit or county. Adequate funding for victim-witness assistance programs should be sought from all available sources (state, federal, and local).

Several acts passed in the 1995 legislation session provide additional money and support to victim witness assistance programs. Act #289 makes provisions concerning the rights of victims, and enacts a "Crime Victims' Bill of Rights." Act #290 authorizes district attorneys to appoint one additional attorney per circuit to serve as an advocate of victims' rights. Act #236 allows the imposition of certain additional fines to provide monies to district attorneys' and solicitors' offices for victim assistance programs.

13. Because of limited resources on the part of many minorities, the courts should work to make it easier for minority victims and witnesses to attend court proceedings and to minimize the amount of time required of and transportation difficulties faced by these individuals, especially if attending proceedings requires their having to take off from work.

14. It will be very important that victim witness services programs be staffed with personnel who reflect the diversity of the population of that circuit or county.

In addition to the direct advantages for victims and witnesses, the court system itself would also benefit from such programs. Having witnesses and victims involved and informed in the legal process serves to develop trust and understanding of the court

system in the same way that trust and understanding is developed by having the public involved in jury participation. Maintaining a diverse staff is important. "Victims and witnesses are more comfortable when they see someone who looks like them on their side," Ann Elmore, an assistant district attorney in Chatham County, noted in an interview with the *Savannah Morning News*. Positive interactive experiences with the court system help the public understand the court system as a source of protection rather than solely of punishment.

Section 9: Sentencing

In terms of perceptions about racial parity in sentencing, the Attitude Surveys indicated that over 70% of the responding minority attorneys were of the opinion that prosecutors recommend more severe sentences for minority defendants than for non-minority defendants convicted of similar offenses under similar circumstances. The distribution of perceptions among the non-minority respondents was almost exactly opposite, with 70% stating that the severity of the prosecution's sentencing recommendations is not affected by the defendant's race. Roughly 90% of the superior and state court judges likewise felt that prosecutors did not differentiate in their sentencing recommendations on the basis of race.

Similarly opposing perceptions among the minority and non-minority respondents were seen in regard to recommendations for reduced sentences. While 68% of minority lawyers thought that prosecutors are more likely to recommend reduced sentences for non-minority rather than for minority defendants, 69% of the non-minority attorneys held that prosecutors do not make differential recommendations for sentence reductions on the basis of race. Eighty-five percent of the superior and state court judges also stated that there is no racial differentiation in terms of prosecution recommendations for reduced sentences.

With regard to actual convictions and sentences, the Department of Corrections provided the Commission with general sentencing reports covering 1991 through 1993 admissions of white and black inmates to Georgia correctional facilities. The following table lists the total number of black and white offenders admitted to correctional institutions for various crime types, and includes all determinate, life, and death sentences. Also listed are the percentages of black and white individuals

incarcerated for each type of crime. The table provides information on average sentences as well. The average sentence is the mean sentence length (in years) for each crime category exclusive of indeterminate sentences (*i.e.*, life imprisonment and death sentences). In order to incorporate these indeterminate sentences into a measure of average sentence length, the Department of Corrections assigns a value of 45 years for each life imprisonment and death sentence. These are averaged along with the determinate sentences to yield the average adjusted sentence length.

Comparison of Black and White Inmates Admitted to Georgia Correctional Institutions from 1991 through 1993							
Offense	Total Incarcerated (per offense type)	White			Black		
		%	Average Sentence	Average Adjusted Sentence	%	Average Sentence	Average Adjusted Sentence
All crimes in this report	24031	31.94	5.56	6.82	68.06	5.59	7.24
Violent/personal	5979	24.25	8.20	13.30	75.75	8.40	12.37
Non-violent/personal	16	62.50	6.90	6.90	37.50	3.23	3.23
Property	6823	35.73	4.59	4.61	64.27	3.85	3.87
Drug sales	3220	17.24	5.55	5.69	82.76	6.79	8.34
Drug possession	3738	18.81	3.69	3.75	81.19	3.51	3.90
Habitual DUI	1553	67.55	2.77	2.77	32.45	2.47	2.47
Sex offender	1713	62.99	9.63	10.95	37.01	9.66	12.56

As can be seen, the distribution of black and white inmates differs depending on the type of offense. The largest disparity is in terms of drug offenses, in which the percentage of blacks incarcerated for drug sales or drug possession was over four times greater than the percentage of whites incarcerated for the same offenses. Blacks also represented a much larger proportion of inmates serving time for violent personal offenses and property offenses than did whites. For the remaining crime types, white offenders represented greater proportions than did black offenders. The proportion of white inmates serving time for habitual DUI, sex offenses, and non-violent personal offenses was nearly twice that of black inmates.

Although there were some notable racial differences among inmates being held on different types of offenses, there were markedly fewer disparities overall regarding average sentence

length (exclusive of life imprisonment and death sentences). There appeared no difference between the average sentences of white and black inmates incarcerated for violent personal offenses, sex offenses, habitual DUI, or drug possession. The average determinate sentence for blacks convicted of drug sales, however, was greater than that for white inmates serving time for selling drugs. For non-violent personal offenses and for property offenses, white inmates received longer prison sentences than did black inmates.

When life imprisonment and death sentences are factored into the average sentence, however, the picture changes somewhat. When these indeterminate sentences were included, the average adjusted sentence length for violent personal offenses was longer for white inmates than for black inmates. No such disparity was evident when life and death sentences were excluded. For property offenses, white inmates continued to have longer average sentence lengths, even incorporating the indeterminate sentences. No racial difference was apparent when including life sentences for drug possession. However, the disparity previously noted concerning length of sentence for drug sales was notably greater when including life sentences, with black inmates receiving much longer average sentences. Black inmates also evinced notably lengthier average sentences for sex offenses than did white inmates when the indeterminate sentences were incorporated.

From the information in this table, it is apparent that there are over twice as many black inmates as there are white inmates. In the four crime categories (noted in the above table) encompassing the greatest number of inmates, black offenders represented much greater proportions than did white offenders. This was especially evident regarding drug offenses, where black inmates accounted for over 81% of all those incarcerated for drug possession and sales. Although sentence length was similar for black and white inmates imprisoned for drug possession, black inmates incarcerated for drug sales received notably longer sentences than did white offenders. Although more black inmates were incarcerated for violent personal offenses, their average sentences were no longer than those handed down to the white inmates. The proportion of white sex offenders was greater than the proportion of black sex offenders, and there were on average no differences in length of determinate sentences. When life imprisonment and death sentences were included however, black

offenders had longer average adjusted sentences, suggesting that there were more black inmates serving these types of sentences than were white inmates.

As was the case with most of its areas of inquiry, the data available to the Commission was limited. The Department of Corrections and the Board of Pardons and Paroles maintain a very large database of information on individual offenders who have been sentenced to incarceration and/or probation. This database, however, is geared toward management and processing of individual cases, and, although arguably the most systematic and thorough database available, is not ideally designed for research and policy analysis purposes. The collection of data for purposes of policy analysis has typically not been a priority in our criminal justice system. Having databases structured and designed with only the disposition of individual cases in mind means that information relevant to making sound policy decisions is often unavailable for consideration.

There is a pervasive lack of adequate data from which conclusions and policy decisions could be made. The Commission had wanted to investigate potential racial disparities among persons convicted for offenses such as criminal trespass or simple burglary. Limitations in the available databases precluded such analyses. For example, early talks with statisticians at the Department of Corrections indicated that there were some problems in accurately accessing some of the probation data. Specifically, when someone started serving the probation portion of a split sentence, they were counted as a new admission under probation. Consequently, it was not possible to accurately sort individuals on probation as part of a split sentence from those serving straight probation. It was noted this problem could be rectified by writing some additional computer programs, but that this had not been an item of high enough priority to be implemented at that moment. Since those early conversations, we have found that the Department of Corrections has written these programs and is now currently attempting to rectify this issue.

The databases maintained by the Department of Corrections and the Board of Pardons and Paroles, along with the Georgia Crime Information Center (GCIC) arrest database, are the most extensive in terms of the breadth of information available of any of Georgia's criminal justice agencies. However, in the process of soliciting information from the Department of Corrections, it was revealed that certain elements of key interest to many of the

Commission's inquiries were not included in the database. For example, the Commission was interested in reviewing factors such as type of representation (privately retained versus court appointed) and type of conviction (plea versus trial). While ready access to these and other such variables is necessary to conduct thorough research and policy analyses, they have not been included in the Department of Corrections and the Board of Pardons and Paroles database for a number of reasons. While access to such information is desirable, it was not deemed critical to the agencies' operation. Significant strides have been made in terms of including a wider array of variables in the database, but such additions cannot be accomplished without adequate funding.

Aside from the cost of collecting, maintaining, and processing additional data elements, additional problems are created by a lack of completeness and accuracy in terms of the information that could be passed on to Department of Corrections and the Board of Pardons and Paroles database. The lack of a statewide systematic approach for recording and reporting court case information poses significant difficulties.

As more and more agencies and offices begin to develop electronic means of maintaining data and records, two additional issues are becoming of increasing importance. The first relates to the ability and willingness of agencies to share the information that they are maintaining. For example, being able to access data maintained by the courts and the district attorneys' offices could greatly complement the Department of Corrections and the Board of Pardons and Paroles database. The ability to do this not only relies on cooperation and the appropriate computer networking capabilities, it also requires that there be compatibility and uniformity between state and local agencies' databases.

All criminal justice databases should be re-designed so as to provide for substantial policy analyses. These databases should begin to include information deemed relevant to issues identified as sources of potential racial disparity (*e.g.*, type of representation). The General Assembly should provide adequate funding for appropriate integrated enhancements. The capacity to conduct extensive policy analyses would benefit all branches of government provided appropriate linkages are included. The ability to conduct any meaningful policy analysis rests on the integrity and inclusiveness of the database. In short, a uniform system of automated data collection, extending to and including the courts and prosecutors' offices, is necessary.

Mandatory Sentencing

Of all the national attention and vigorous debate over the past few years concerning benefits and drawbacks of mandatory minimum sentences for drug convictions, issues related to cocaine offenses have been the most hotly contested. Much of the controversy surrounding such mandatory sentencing practices centers on the finding that minorities comprise a disproportionately large percentage of persons arrested and convicted for cocaine offenses. In an article in *The Champion* (July 1991), for example, it was estimated that African-Americans constitute 12% of all drug users but represent 44% of persons arrested for drug possession. In the 1991 *Survey of Prison Inmates*, the State Justice Institute reported that nationally 32% of inmates (regardless of the offense for which they were convicted) were regular users of cocaine or crack. Sixteen percent of the inmates indicated that they were using cocaine or crack on a daily basis for the month preceding their offense. In fact, roughly 14% of the inmates reported that they had committed their offense while under the influence of crack or cocaine.

This issue has come before federal appellate courts in the form of challenges to the federal sentencing guidelines' provision for differential sentences on the basis of the type of cocaine involved in the offense (crack versus powder). Under the federal sentencing guidelines, adopted in 1984, individuals convicted for offenses involving crack cocaine or powder cocaine face mandatory minimum prison terms if the quantity involved exceeds a certain amount. Prison sentences are mandated if five or more grams of crack cocaine are involved, whereas prison sentences are not mandated for powder cocaine until the amount involved reaches 500 grams. Several states have similar differential sentencing provisions (e.g., Ohio, where mandatory prison terms are handed down for possession of 10 or more grams of crack cocaine and for 25 or more grams of powder cocaine). In Minnesota, which had a similar differential sentencing for crack versus powder cocaine before that state's Supreme Court struck down the statute as discriminatory (*State v. Russell*, 477 N.W.2d 886 (Minn. 1991)), over 95% of arrests for crack were of African-American individuals while over 80% of arrests for powder cocaine were white. In that the use of crack cocaine appears more

prevalent among African-Americans, some argue that such sentencing practices demonstrate significant racial bias.

There is no differentiation between crack and powder cocaine under Georgia law. Although the type of cocaine involved in drug offenses is not specifically an issue in our state, the prevalence of drug offenses in Georgia and the disproportionate number of African-Americans serving prison sentences for drug convictions are definite problematic issues. Allegations of racial disparity in mandatory sentencing, specifically mandatory sentences for drug offenses, were brought to the attention of the Commission soon after it was formed. In testimony and documentation provided to the Commission there was some evidence, both anecdotal and statistical, of an apparent disparate effect of heavy mandatory minimum sentences upon minority defendants. This information was predominantly in reference to mandatory life sentences for drug convictions under O.C.G.A. § 16-13-30(d).

Mandatory Life Sentences Under O.C.G.A. § 16-13-30(d)

In October of 1993 at the Commission's first public hearing, Tommy Morris, then Chairperson of the Board of Pardons and Paroles, testified about the disproportionately large percentage of minority (mainly African-American) inmates being held in Georgia's correctional institutions. In addition to citing general racial demographic statistics for inmates imprisoned for drug offenses and a variety of other crime types, he went into considerable detail on statistics indicating that the individuals who were serving a mandatory life sentence for a second drug conviction under O.C.G.A. § 16-13-30(d) were overwhelmingly African-American. O.C.G.A. § 16-13-30 covers purchase, possession, manufacture, distribution, and sale of controlled substances and marijuana. The relevant portions of this statute are as follows:

(b) Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, sell, or possess with intent to distribute any controlled substance.

(d) Except as otherwise provided, any person who violates subsection (b) of this Code section with respect to a controlled substance in Schedule I or a narcotic drug in Schedule II shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than five years nor more than 30

years. Upon conviction of a second or subsequent offense, he shall be imprisoned for life. (emphasis added).

The May, 1993, Board of Pardons and Paroles profile report on drug offenders with life sentences, on which Mr. Morris based his testimony, indicated that of the 243 inmates serving a life sentence as of May 1, 1993, for a second conviction under this statute, 240 were black (227 males, 13 females).

FINDING:

The percentage of African-American inmates serving mandatory life sentences for a second drug conviction under O.C.G.A. § 16-13-30(d) is extremely disproportionate relative to the percentage of white inmates sentenced to life imprisonment for drug offenses.

There is an increasing state and national trend toward legislatively mandated minimum sentences. In light of the extremely disproportionate number of African-American inmates serving mandatory life sentences in Georgia for a second drug offense, the Commission felt that the issue of mandatory sentencing for drug convictions warranted additional study. The existing information in this one area, combined with perceptions in part of our community as to disparate enforcement of the war on the sale and use of illegal drugs, requires further study of this problem both in the specific case of life sentences for a second drug conviction and in terms of mandatory sentencing in general.

As was found with many of the Commission's inquiries, however, there was a lack of adequate data for the type of analysis desired. The complete data needed to sufficiently document that the racial disproportionality was the result of systematic bias, and to adequately identify and explain factors resulting in this racially disparate outcome were simply not available. Most states utilizing mandatory sentencing guidelines have sentencing commissions that have been legislatively mandated to maintain extensive databases for purposes of evaluating sentencing practices. As noted previously, Georgia has no such body charged with collecting data for policy analyses. Nevertheless, the Commission, with the assistance of the Department of Corrections, sought to obtain all the information it could concerning sentencing under O.C.G.A. § 16-13-30(d).

The first statistical information the Commission received was a copy of the May, 1993, profile report written by the Board of

Pardons and Paroles on life sentences for drug offenses. This report constituted a composite profile of all persons sentenced to life imprisonment under O.C.G.A. § 16-13-30(d) from the time the it was enacted in 1982 through May 1, 1993. As noted above, this report indicated that of the 243 inmates that had been sentenced to life imprisonment under this Code section, 240 were black. Additionally, this profile report indicated that 60% of the inmates had convictions for drug sales. Cocaine was involved in 93% of all cases. Over three quarters of these convictions were for sales of amounts of less than one gram, with an estimated worth of less than \$100. Eighty-seven percent of these inmates had pled guilty in their first drug conviction while 39% pled guilty to their second offense. In short, a large proportion of these offenders were given a mandatory life sentence following a guilty plea.

Information regarding the offenders' attorneys was available in 62% of the cases for which the inmates received a life sentence. Of the 151 cases for which the Board of Pardons and Paroles was able to obtain this information, 122 had had court appointed attorneys. Much of the information presented in the Pardons and Paroles report was not available in any electronic database and had to be retrieved by manually reading the inmates' files. Complete information on many factors of interest (e.g., type of representation) was not systematically available in the inmate files.

Two of the eight inmates participating in the Commission's correctional forum were serving a life sentence under O.C.G.A. § 16-13-30(d). Both inmates said that they had received their life sentence after pleading guilty for selling cocaine. These inmates (both African-Americans convicted in separate cases) told the panel of Commission members that the court appointed attorney in each of their cases had encouraged them to plead guilty. They stated that the attorneys had told them that they would receive a life sentence by pleading, but implied that they would only have to serve a few years. In both cases the inmates stated that their convictions had been for sales of \$100 or less.

As written, O.C.G.A. § 16-13-30(d) *mandates* that all persons convicted of two or more of the offenses in subsection (d) must be sentenced to life imprisonment. If convicted under this subsection, a judge has no alternative but to impose a life sentence. In practice, however, not all offenders who *could* be prosecuted under this subsection actually are so prosecuted. In order for a defendant to be sentenced to life imprisonment,

he/she must have been specifically charged under this Code subsection. During the course of his testimony at the first public hearing, Mr. Morris acknowledged the possibility that disparate outcomes in sentencing could be affected by factors originating at the charging level. Given that there appears some discretion in seeking life sentences under O.C.G.A. § 16-13-30(d) the Commission recognized that, in order to more fully assess any racial disparities associated with sentencing under this statute, the racial distribution of individuals receiving life sentences must be compared against the racial distribution of the offenders who were eligible to be charged under sub-section (d) of this statute but were not so charged (*i.e.*, had two or more convictions but for whom the enhanced penalty was not sought).

Toward that end, the Commission asked for information from the Department of Corrections (DOC) on all persons with two or more convictions for any of the offenses that could result in a life sentence. The Department of Corrections informed the Commission that the database was not structured so as to allow a differentiation between simple possession (which can *not* result in a life sentence) and possession with intent to distribute (which *can* result in such a sentence). In order to obtain the most accurate data possible, the Commission therefore limited its request to convictions for drug sales. Additionally, idiosyncrasies in the structure of the database made it difficult to readily obtain accurate information concerning probation and split sentences without considerable additional programming on the part of Department of Corrections statisticians. Consequently, analyses were further limited to incarceration data.

Subsequent to the Commission's initial request for this information, an African-American male sentenced to life imprisonment under O.C.G.A. § 16-13-30(d) appealed his case to the Georgia Supreme Court. In this case, *Stephens v. State*, No. 594A 1854 (Ga. S. Ct. March 30, 1995), the appellant challenged his conviction on the grounds that this statute is irrational and discriminatory. As support for his contention, the appellant provided the Court with testimony from a police officer from the county of conviction as to the racial distribution of arrests for drug offenses in that county. This was contrasted with the racial distribution of persons in that county sentenced to life imprisonment under O.C.G.A. § 16-13-30(d), with such information being provided by a Department of Corrections statistician. This statistician also testified to state-wide statistics

on the racial distribution of persons serving such life sentences and on persons who would have been eligible for such sentences (i.e., those having two or more convictions) but who were incarcerated on sentences other than life imprisonment.

In *Stephens*, while three justices found the existing statistical evidence sufficient to create a prima facie case of discrimination in individual cases, the majority decision deferred on whether state-wide statistics could be sufficient to prove an allegation of discriminatory intent. Whether or not such statistics shall ever be sufficiently probative for legal decision-making in individual cases, the collecting and analyzing of such information would improve the understanding of why this statute has resulted in disproportionate numbers of minorities serving life sentences, and might be helpful to legislative decision-makers who enact mandatory sentencing laws.

During the *Stephens* litigation, the Commission continued its efforts to obtain data on mandatory life sentences under this Code section. The Department of Corrections, in its continued assistance, completed the programming necessary to accurately differentiate probation and split sentences, thereby allowing for a more extensive analysis of the cases involving inmates convicted of two or more drug sale offenses. By completing this additional programming, the Department of Corrections was then able to include in the comparison group all individuals (regardless of whether they were sentenced to incarceration, probation, or a split sentence) who were eligible to be charged under the second offense provision of O.C.G.A. § 16-13-30(d) but had been charged otherwise. These DOC data included all persons convicted for drug sale offenses between January, 1990, and March, 1995, who also had at least one or more additional previous convictions for drug sales. Thus, this information, discussed in the ensuing paragraphs, is broader than that included in *Stephens* in that it includes convictions resulting in probation, split sentences, and incarceration (*Stephens* included only incarcerations) and covered a larger time frame (*Stephens* covered only January, 1990, through July, 1994). By the time this information became available, the Court had already reached its decision in *Stephens*.

This most recent information on offenders having two or more convictions for drug sales included 2,836 individuals, 140 (5%) of whom had been sentenced to life imprisonment. Of the 140 serving life sentences, 138 were African-American. In the group of offenders serving sentences other than life imprisonment,

African-Americans constituted 84.5% (2,279 of 2,696 individuals). Of all 419 white offenders having two or more convictions for drug sales, only two (0.5%) received a life sentence. Of all black offenders having two or more drug sales convictions, however, 5.7% were sentenced to life imprisonment.

These statistics obviously demonstrate that the outcome of these drug offense cases differ significantly along racial lines. The magnitude of these statistics is underscored by recalling that the 1990 census reported that African-Americans constitute only 27% of Georgia's population. Despite these statistics, however, the Commission is quick to recognize the limitations that can be drawn from these data. In order to be fully confident in identifying the factors associated with the differentially large percentage of African-Americans being sentenced (whether to life imprisonment or to some determinate sentence) for drug offenses, a more detailed study would need to be undertaken. Based on the limited data which is available, however, it seems that the issue of racial disparity in mandatory drug sentencing demands further study.

RECOMMENDATIONS:

15. The State has the ability to undertake additional objective testing of the perception of bias in mandatory sentencing. First, a complete and thorough study of the application of O.C.G.A. § 16-13-30(d) should be conducted, breaking down data for each circuit. In order to achieve this, information of the criminal record of the defendant, the type of representation (private, public defender, or appointed indigent defense), the type of disposition (plea or trial), and the quantity of drugs should be developed, obtained, and incorporated into the relevant databases.

Ideally, such a study would include, but by no means be limited to: the exercise of discretion in arrest decisions by police officials, charging and plea negotiation decisions by prosecutors, and sentencing practices of judges, which in turn may be affected by such factors as the actual rate of commission of the relevant offense by minority and non-minority populations, and as to individual cases, the defendant's prior record (both arrests and convictions) as to the offense in question as well as other offenses; the defendant's current legal status (e.g., probation or parole); the aggravating or mitigating circumstances of the instant alleged offense; the economic circumstances of the

defendant and his/her family or other support resources; the existence of lingual or other such functional impediments operating upon the accused; whether the accused is represented by retained or appointed counsel; and the defense strategy followed by the accused (e.g., negotiated plea, open-ended plea, or trial—whether by court or jury).

16. The Implementation Committee, with the assistance of such agencies as the Georgia Statistical Analysis Bureau (under the auspices of the Criminal Justice Coordinating Council) and the Prosecuting Attorneys' Council, should see that these studies are conducted. Periodic analyses and assessments of other mandatory sentences should be conducted so as to detect potential racial disparity. If such studies do indicate racial bias in the court system, the Implementation Committee should pursue steps to rectify any problems.

The Commission has continued its efforts at gathering data in regard to these issues. At the Commission's request, the Department of Corrections, which should be recognized for its continued assistance, is working to extract the relevant cases and variables from their database to create a separate database to be used for further analysis of mandatory life sentencing under O.C.G.A. § 16-13-30(d). This database should be given to the Implementation Committee, which should be charged with completing such analyses.

17. O.C.G.A. § 16-13-30(d) was passed to provide for a mandatory life sentence for all second convictions. In fact, only one out of six persons eligible to be charged under this section were so charged and sentenced to life imprisonment. Without specific criteria consistently applied to all of these cases, there is an opportunity for unequal and unfair application of the law. Therefore, the Commission believes that even without additional data, alternatives to the current process should be considered. Legislative alternatives could include changing O.C.G.A. § 16-13-30(d) to provide that life imprisonment be a maximum rather than mandatory, or eliminating prosecutorial charging discretion regarding Code subsection (d). Another approach would be for the Prosecuting Attorneys' Council to develop explicit, race-neutral guidelines for use in these cases by district attorneys to safeguard against bias.

Death Penalty

The Commission recognizes that the subject of the death penalty evokes intense reactions. Figures provided by Michael Mears, Acting Director of the Georgia Indigent Defense Council, indicated that as of May 3, 1995, there were 106 persons awaiting execution on death row in Georgia. Of these inmates 60 are white and 46 are black. One hundred twenty-two persons were awaiting trial on death penalty offenses as of June, 1995. The racial composition of these individuals included 63 black males, 45 white males, one black female and one white female (race was unknown for twelve males). It is a concern of the Commission that the number of persons receiving a death sentence or charged with a death penalty offense are disproportionately African-American.

Georgia has a long history of death penalty litigation. Several of these cases are prominent, including *Furman v. Georgia* 408 U.S. 238, 92 S. Ct. 2726 (1972), which invalidated the death penalty in Georgia. The U.S. Supreme Court's opinion noted different patterns of sentencing and execution of whites and blacks. The basis of this opinion was a challenge under the cruel and unusual punishment prohibition of the Eighth Amendment to the U.S. Constitution that the manner in which the penalty was meted out was capricious and arbitrary. The legislature enacted a new death penalty statute which was upheld in *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909 (1976), although parts of the statute were invalidated as relates to crimes other than murder. The new statute requires a consideration by jurors of both mitigating and specific aggravating circumstances in determining whether to render a sentence of death.

Numerous studies have attempted to determine the effect of race on the imposition of a death penalty. The *McClesky v. Kemp* case (481 U.S. 279, 107 S. Ct. 1756 (1987)) attempted to evaluate the effects of the race of the defendant and victim on the outcome of the case for Georgia murder convictions from 1973 to 1978. The defense presented a study funded by the NAACP informally referred to as the "Baldus Study" (after David Baldus, one of the university professors directing the study). This study reported that in cases of moderate aggravating factual situations, blacks who killed whites were more likely to receive the death penalty than whites who killed whites. Baldus found that the death penalty was assessed in 22 percent of cases involving black

defendants and white victims, 8% of the cases involving white defendants and white victims, 1% involving black defendants and black victims, and 3% of cases involving white defendants and black victims.

The Supreme Court in a 5 to 4 decision rejected McClesky's appeal, stating in the opinion that the "statistical evidence presented in McClesky included too many entities (prosecutors, judges, juries) whose exercise of discretion reflected too many variables to challenge successfully the exercise of discretion in any single case." In the majority opinion, Justice Powell wrote that the statistics alone in the case were insufficient proof to warrant invalidating Georgia's death penalty, although he stated that the statistics "indicate a discrepancy that appears to correlate with race." The court stated that to support a claim that the state discriminated on the basis of race, a defendant must offer specific evidence that the state acted with discriminatory purpose in his or her particular case.

In 1994, the U.S. Congress considered whether to include in the Omnibus Crime Control Bill a provision labelled the Racial Justice Act, which would allow for the establishment of a *prima facie* showing of discrimination in death penalty cases. Although the act did not become law, it would have placed the burden on the prosecutor to demonstrate that any racial disparities in sentencing are explained convincingly by non-racial factors.

In addition to the ongoing controversy concerning the appropriateness of having a death penalty, debate continues as to the adequacy of statistical data to validate the connection, if any, between race and death sentences, as well as who should assume the burden of proving discrimination. Although no consensus has been reached, changes have been occurring to ensure equal legal representation, an opportunity for a complete review, and the fair cross-representation of juries in death penalty cases. Since the 1970s, numerous case appeals, the Unified Appeals Rule of the Georgia Supreme Court, and the *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986) case, are resulting in a greater proportion of minorities serving on juries and automatic appellate review of all death cases. Although still inadequate, the state resources allocated to indigent defense have increased and several programs, such as the Multi-County Public Defender Program and the Appellate Resource Center, have increased the level of experience and training of counsel in these cases.

The large number of factors involved in a death penalty decision, as pointed out in the Baldus study, combined with the numerous entities involved in these decisions, as noted by Justice Powell in *McCleskey*, are beyond the resources of the Commission to adequately assess. Nor can this Commission solve the political debate over the appropriateness of the use of the death penalty in our society. Instead, we have sought to concentrate on how justice system participants can be well informed as to the data, how the adversary process can be improved to equalize resources of the defense and prosecution, how to ensure that only legal factors are used in justice system decision-making, and how to obtain the best representative and least biased individuals as justice system officials and jurors. The other recommendations throughout this report should help to achieve these goals.

Section 10: Diversion and Post-release Programs

According to the Georgia Department of Corrections, approximately 68% of the 1992 prison population was minority. One out of five of these inmates had been employed at the time of the crime for which they were convicted. Twenty-two percent of the inmates reported that they had been unemployed for less than six months before commission of the offense; half of the prisoners reported that they had been unemployed for greater than six months prior to being arrested and convicted. In terms of education, 22% of Georgia inmates had less than a 10th grade education.

In the 1993 U.S. Department of Justice nation-wide report *Age-Specific Arrest Rates and Race-Specific Arrest Rates for Selected Offenses, 1965-1992*, information was reported on the racial distribution of arrest rates for state and local drug offenses. This study indicated that for 1992, the arrest rate (per 100,000 inhabitants) for whites was 381.3 while the arrest rates for blacks was 1,999.9.

PROBLEM STATEMENT:

Better diversion and post-release programs are needed so that the large number of incarcerated minorities can improve their education/job skills and receive treatment for substance and alcohol abuse so as to help reduce the likelihood of re-entering the court system.

Return to prison rates are clearly impacted by the abuse of drugs and alcohol. The return to prison rate for those abusing neither drugs nor alcohol was only 18%. For those abusing drugs, the return to prison rate was 39%; for alcohol abuse the return rate was about 42%. For those inmates that had been abusing both drugs and alcohol, the return to prison rate was 57%. Department of Corrections Commissioner Allen Ault was cited in *Bill Shipp's Georgia* (vol. 8, no. 38, May 22, 1995) as attributing the increase in drug use as a primary reason for the dramatic increases in prison populations in recent years.

RECOMMENDATION:

18. Post-release "aftercare" programs, especially for drug offenders, should be developed. These programs should focus on factors such as employment training and placement so that offenders are not simply returned to the same situation they were in prior to arrest and conviction.

It is this Commission's intention that such programs should be particularly aimed at offenders convicted of relatively less severe offenses. This includes not only inmates convicted of drug offenses (such as simple possession, but not for trafficking) as well as inmates who have been convicted of non-drug offenses but who may have substance and/or alcohol abuse problems.

This Commission supports the Georgia Supreme Court's recent Committee on Substance Abuse and the Courts, and encourages participation in any innovative approaches to substance abuse that they may endorse. The Implementation Committee should follow the progress of the Committee on Substance Abuse and the Courts and should closely observe the results as affects minorities.

VII. JURIES AND JURY POOLS

For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government.

From the testimony at the public hearings and forums conducted by the Commission, it is clear that many residents sincerely believe that systemic racial and ethnic bias exists in our court system. These perceptions are deep seated and not

easily cured. One way to overcome some of the persistent feeling of distrust of the system is by greater public participation in the court system as jurors. Citizens who serve on juries usually have a positive view of the outcome of the case and of the court's procedures. Neighborhoods, communities, and ethnic groups often are more willing to accept verdicts as just and correct if rendered by juries which include members of their community or ethnic group.

Section 1: Treatment of Minority Jurors

Citizen concerns about reluctance of minorities to serve because of intimidation resulted in the Commission asking some of the courts to request jurors to complete a Jury Exit Questionnaire. This brief survey asked questions about treatment of jurors by the judges, attorneys, court personnel and fellow jurors. Sixteen counties returned questionnaires. Of the 1,339 juror questionnaires returned, over half were received from DeKalb County.

Most of the comments received were favorable as to the jurors' experiences, such as:

"This is my first time to serve as a juror; I had dreaded it but I was very impressed with the respect and professionalism by all. I appreciate the court system and the importance of the jurors much more now."

"All members of the court behaved professionally at all times. They helped make it a good experience where I thought it would not be."

In contrast, there were a few comments suggesting frustration with delays, failure of court personnel to explain what was happening, or to provide adequate refreshments such as water, coffee, etc. It was suggested by jurors in a metro-Atlanta court that a MARTA token for those who may have such a need, be offered as an alternative to a parking pass.

In terms of courtesy and respect for all persons, there were a few comments alleging attorneys to be rude or patronizing. There were two instances reported of jurors expressing to other jurors prejudices about persons of other races and religious faiths, and one instance in which a juror felt an attorney had excessively and improperly questioned a juror about his Cuban background.

FINDING:

From the limited study conducted by the Commission it appears that biased behavior of judges, court personnel, attorneys or other jurors toward the persons actually serving on Georgia trial jury panels is not widespread.

RECOMMENDATIONS:

- 1. The judges should ensure that all court personnel treat all jurors with courtesy and respect and seek to accommodate the needs of jurors in a manner to encourage a positive experience with the court system.*
- 2. Judges should ensure that attorneys treat all jurors in a professional manner in the courtroom.*
- 3. Judges should ensure that voir dire is conducted in a manner respectful to the juror with a goal of obtaining objective jurors.*

Section 2: Representation of Minority Jurors in Jury Boxes and on Trial Panels

In the past, Georgia gave little opportunity for minority citizens to participate in the jury process. African-Americans were often underrepresented or excluded from jury panels in the state. Since the 1970s, better jury procedures, educational efforts with jury commissioners, and the jury certification process required by the Unified Appeals procedures adopted as a uniform court rule by the Georgia Supreme Court have resulted in a fairer cross representation of the community in Georgia's jury boxes for women and African-Americans. No witnesses at the public hearings or forums complained that the jury boxes and arrays were improperly composed. Even witnesses who were otherwise critical of the justice system on racial grounds stated, when questioned, that jurors appeared to be summoned to the courthouse in percentages which accurately reflect the demographics of the county. The Commission's survey of the clerks of the jury commission showed that the jury box matched the black/white and female/male percentages in the 1990 county population within the certificate requirement of 5% for almost all counties. There were a few instances of the percentage being over by a few hundredths of a percentage point and one in which there was an over representation of blacks by 8%.

Although the racial distribution of the jury boxes matched the racial distribution of their respective counties, witnesses from two circuits asserted that the same jurors appeared to serve each time, and that they were not selected randomly from the eligible minority citizens.

The Commission's investigation gave some credence to the complaints voiced at the public hearings. A survey of Jury Commissioners revealed that the number of names in the jury box in some counties is a small fraction of the eligible jurors. Of the 81 counties reporting, 34 have trial jury lists which include less than 20% of the persons eligible for jury service, with ten having less than a thousand names in the jury box. Obviously, the numbers of minority jurors in such boxes are small enough that some "hand picking" is theoretically possible.

In fact, Georgia statutory law implies that the jury commissioners in each county should "hand pick" the jurors. O.C.G.A. § 15-12-40 requires the commissioners to place on the jury source list the names of "intelligent and upright" citizens of the county. Interviews with some jury commissioners revealed that they take their duties seriously. In some counties, the large number of jurors needed each year and the resulting large number of names in the jury box precludes any attempt at screening or "hand picking" the jurors. In smaller counties, however, a careful screening is clearly practical and regularly occurs. Although the jury commissioners are well-intentioned and conscientious in attempting to obey the law, their efforts may produce lists of jurors which might not be fully representative and not randomly selected.

FINDING:

There is a perception in some judicial circuits that the minority citizens who are summoned for jury duty are "hand picked" rather than being randomly chosen. It is not usually feasible to "hand pick" thousands of jurors. Requiring minimum numbers of jurors in the box would ensure representative and inclusive jury panels.

RECOMMENDATIONS:

4. The General Assembly should be urged to amend O.C.G.A. § 15-12-40 to require that jury source lists contain at least 80% of the persons eligible for jury service and to amend O.C.G.A. § 15-12-42 to require that county jury boxes contain at least 50% of the persons eligible for jury service.

5. O.C.G.A. § 15-12-40 should be amended to delete the requirement that jury commissioners choose "intelligent and upright" citizens to be trial jurors.

Unless they have been convicted of a felony, citizens should be presumed intelligent and upright. Requiring jury commissioners to decide which citizens are intelligent and which are upright introduces an element of discretion that is not compatible with the goal of compiling a randomly selected, representative jury list.

Until July 1, 1995, the statutes provided that the voter registration list of the county would be the source list for the jury box. If names from this list could not produce the desired percentages of black, white, male and female proportions comparable to the last census within the 5% tolerance, the jury commissioners had a duty to supplement the list. This meant that if the jury box is small enough, it can be balanced without supplementation. There has been criticism of the use of the voters list as the source list since it has been estimated that less than 65% of persons eligible to vote are registered and that African-Americans have an even smaller registration rate. The 1995 General Assembly passed an amendment to the jury code which does not require the use of the voters list as the primary source but instead emphasizes the requirement for a fair cross-representation of the community. In order to obtain a more inclusive list, about 36 states now use state driver's license lists or merged voter registration and driver's license lists to increase the inclusiveness of their jury pools (*ABA Journal*, January, 1995). Many of these states have been able to achieve jury lists composed of over 80% of the eligible population. In Georgia, the installation of a computer network for voter registrars and the ability of a citizen under federally required "motorvoter laws" to register to vote while applying for a driver's license or public assistance should hopefully improve the inclusiveness of the jury lists.

During the hearings, there was an allegation that the same minority jurors serve again and again and that African-Americans are discouraged from serving. To further investigate this issue, the commission included questions in the Clerk of the Jury Commission Survey concerning the appearance rate generally of jurors and of African-American jurors as compared to white jurors. The results showed that reported appearance rates ranged from a low of 30% to a high of 100%. Unfortunately,

several of the largest counties failed to respond to this survey. Only ten counties of the eighty-one responding stated that the appearance rate was less than 75%. Only five responses stated that minorities had a lower appearance rate than white citizens, and in some counties minorities had a better rate. Therefore, the more important elements seem to be the number of blacks on the source list and the size of the jury box.

Another survey conducted by the Commission included 27 counties which submitted data on the composition of juries actually serving. Of the eleven counties with ten or more trials reported (the survey period for each of these counties was four or more months), the proportion of black citizens serving as jurors was in excess of the percentage of black citizens in the population in nine of these counties. For example, in Fulton county the percentage of black citizens over eighteen years of age in the 1990 census county population was 49.3%. The civil and criminal juries who served during the survey period contained 58.7% black jurors. Chatham County has 38.1% blacks over eighteen. Jury panels during the survey period were 43.1% black, which is a difference of 5%. The disparities are not limited to urban counties. In Harris County, total population 17,788, 25.7% of whom are black residents 18 years old or older, the trial juries contained 36.8% jurors who were black; in Pulaski County (8,108 population), the jury panels contained 34.9% black jurors, about 1.4% more than the number in the county population.

There are several possible reasons for these differences. First, the differences are not particularly large and are based on a small sample of cases. In some counties, according to the Commission's questionnaire to jury commissioners, black citizens obey the jury summons and appear at the courthouse in slightly larger percentages than white citizens. Therefore, the arrays from which trial juries are selected prior to voir dire contain a disproportionate number of black citizens. Thereafter, during jury selection, it is possible that the lawyers and parties may be exercising their strikes to eliminate white jurors.

That possibility is given some creditability by the complaints voiced in the comments to our Attorney Attitude Survey. Numerous lawyers stated that black juries in "Atlanta area" counties give larger verdicts to black plaintiffs than do white or mixed juries. Another piece of supporting data is that the disparity in Fulton County between the population and trial

juries is much greater in civil juries (12.6%) than in criminal juries (6.1%).

FINDING:

The burden of jury service falls unevenly on black citizens in some counties.

RECOMMENDATIONS:

6. Courts should set the length of juror service as short as possible, administratively, employing the concepts of one-day, one-trial, so as to reduce burdens of juror service relating to time away from jobs, care for dependents and other personal business.

7. Trial judges should review local jury procedures to ensure that jury summons are enforced. In particular, excuses and deferrals should not be granted more frequently to white jurors than black jurors.

8. Jury summons should be enforced by "follow-up" when jurors do not appear. When a summon is ignored, a rule nisi should be served, a hearing held and penalties imposed, if warranted.

It was noted at one of the forums held in a county with one of the larger Hispanic communities that rarely are there any members of this community serving on the jury. There are many reasons this may be true. For example, many of Georgia's ethnic minorities are recent immigrants and not yet citizens of the United States, and are therefore not qualified to serve. Secondly, voter registration may be lower for some of these groups since many, such as migrant workers, have not established settled residency in Georgia. It is also possible that although they may be citizens, some persons may not be able to communicate adequately in English to understand the proceedings. Georgia law does provide for removal for cause in such an instance. Other reasons include the manner in which jury commissions compose the jury list. Generally, the commissioners have to struggle with little reliable information about ethnic minorities in their communities. In some instances, members of the Commission were told that ethnic minorities were actually not included in the jury box since they were not classified as either white or black on the voter registration card.

Information from eleven counties which participated in providing information on the composition of the trial jury panels

(and which reported on 10 or more trials) shows that the proportion of ethnic minorities serving in these communities are generally less than the proportion in the 1990 census county population.

FINDING:

Citizens of Georgia who are members of ethnic communities should have as equal an opportunity to serve as a juror as other citizens of the state.

RECOMMENDATIONS:

9. In order to encourage jury commissioners to include citizens of ethnic minorities on the jury source list and in the jury box, the Georgia Supreme Court should be encouraged to amend the traverse jury certificate required by Georgia Unified Superior Court Rule 34 (the "Unified Appeal Certificate") to require the trial judge to certify the number of male and female ethnic minority county residents and the number of male and female "others" on the traverse jury list.

Section 3: Peremptory Challenges

Under Georgia law the attorneys representing parties or the state in trial cases are allowed to choose to exclude a certain number of persons from the jury panel without explaining their reasons for these choices. Since the U.S. Supreme Court case of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986), the use of such a peremptory challenge (or strike) to remove a juror for racial reasons has been illegal. Nonetheless, several witnesses in the public hearings allege that prosecutors on occasion use peremptory strikes to remove black members of the array in death penalty cases in order to maximize the number of white persons as jurors in such cases. The witnesses making these statements were outspoken in their opposition to the death penalty. According to those witnesses, some trial judges in criminal and civil cases accept the "race neutral" explanations given by prosecutors when the explanations are implausible. The rulings of trial judges have been the subject of considerable appellate litigation (e.g., *Lingo v. State*, 263 Ga. 663, 437 S.E.2d 463 (1994); *Covin v. State*, 215 Ga. App. 3, 449 S.E.2d 592 (1994); *Smith v. State*, 263 Ga. 224, 430 S.E.2d 579 (1993); and *Higgenbotham v. State*, 207 Ga. App. 424, 428 S.E.2d 592 (1993); *Congdon v. State*, 262 Ga. 683, 424 S.E.2d 630 (1993)).

After receiving this testimony about allegedly improper uses of peremptory challenges, the Commission undertook collection of empirical data and opinion research to attempt to verify or refute the allegations. With the cooperation of clerks and judges from Superior and State Courts, data were obtained concerning jury trials, both civil and criminal, conducted over a period of about nine months. The data collection set out to determine how many black and white citizens actually served on juries during the survey period in the various counties. It was assumed that the arrays summoned to the courthouses would over time approximate the demographics of each county since the requirements of the Unified Appeal Rule appear to have largely ameliorated past problems with unrepresentative jury arrays. An additional reason for this assumption was that witnesses at the public hearing did not assert deficiencies in the percentages of each group summoned to the courthouse for jury duty. A final assumption was that tracking the number of jurors who actually served would reflect these groups remaining after the lawyers had exercised their peremptory challenges.

Data were obtained from 34 counties on 487 juries. Sixteen counties reported six or more juries. The staff considered fewer than six trial juries in a county insufficient to yield even tentative conclusions. Obviously, the more cards obtained from any particular county the more confident one is about drawing conclusions. This study was also limited by the small number of courts willing to participate in the survey.

Assuming that the racial distribution of jurors in these sixteen counties offers a fairly accurate indication of typical jury panels for those counties, it appears that minority representation on jury panels in fourteen of these counties exceeded the proportion of African-Americans in the county population according to the 1990 census. In the other two counties, the difference was under 6%. No death penalty trials were included in the data obtained. This research was reinforced by historical data gathered by one superior court judge in one county which included four thousand jurors over an eight year period. His data similarly revealed that in each of the eight years black jurors in his courtroom served in equal or slightly larger percentages than their proportion of the county's population.

Although the data collected by the Commission was unable to answer questions about death penalty trial juries specifically, it does not appear, from the limited study conducted that black

citizens are being denied the opportunity for jury service due to widespread abuse of peremptory strikes in civil and criminal cases.

Despite its research, the Commission is concerned that peremptory strikes in some instances, are occasionally used for racial reasons. In fact, the data collected in some cases might support an inference that peremptory strikes are being used improperly in some counties to strike white citizens from trial juries. Moreover, the law is clear that the striking of even one juror from a jury array for a racial reason is illegal. As the United States Supreme Court has explained, “[t]he exercise of a peremptory challenge must not be based on either the race of the juror or the racial stereotypes held by the party.” *Georgia v. McCollum*, 112 S. Ct. 2348 (1992). Over 81% of minority attorneys and 58% of whites shared the perception that verdicts are influenced by jurors’ racial stereotypes in the Attorney Attitude Survey conducted by the Commission.

The most striking evidence that peremptory strikes are improperly utilized was the result of the opinion survey of Georgia attorneys conducted by the Commission. Almost six hundred lawyers answered the questionnaire from a sample of 2000 attorneys contacted. Of the 275 lawyers who provided written comments on Question 18 (“... does a litigant’s race and ethnic background have any effect on the outcome of a case?”), only fifteen said unequivocally “no.” Of those holding the view that race does affect the outcome, seventy percent (70%) expressly mentioned juries or verdicts. Over 81% of minority attorneys and 58% of whites shared the perception that verdicts are influenced by jurors’ racial stereotypes. The following are typical of the comments made by respondents.

“Race, among other factors, is one of the factors jurors consider. I have lost/won jury trials on this basis.”

“To the extent that a county is predominantly black, white, etc., the jury pool will reflect that, and jurors seem to favor litigants of their own race.”

“White jurors favor white litigants. Black jurors favor black litigants over white litigants.”

“A jury trial. Jurors carry bias into the courtroom.”

Because most of the lawyers who responded to the survey felt that the race of jurors affects the outcome of a trial, a lawyer’s

temptation to attempt to alter the racial composition of juries somewhat by use of peremptory strikes must be strong despite *Batson's* prohibition of such strikes. The Commission was also concerned that respected members of the bar would tell Commission members in confidence that they on occasion still use peremptory strikes for racial purposes. Some trial lawyers claim to use racially motivated strikes for reasons which appear to the lawyer to be proper, moral and compelled by the lawyer's duty to his or her client. For example, one lawyer related that he feels obliged when representing a black client to use peremptory strikes to remove a white person from the jury when necessary to ensure that some black citizens would be on the final panel. In that lawyer's view, having some black representation on the jury is necessary so that the client would feel confidence that the system is fair. The lawyer would use strikes for that purpose even if the lawyer himself had confidence that an all-white panel would reach precisely the same result as a mixed jury would. In other words, the strike would be exercised based on the "racial stereotypes held by the party" rather than on the lawyer's tactics.

How can racially impermissible peremptory strikes continue to exist in Georgia in the face of *Batson*? A lawyer who intends to exercise a peremptory strike for a racial reason must during voir dire gather enough information about jurors so that the lawyer may articulate a "race neutral" explanation for the strike when questioned by the trial judge. The explanation given must not hint at a racial stereotype, e.g., *Rector v. State*, 213 Ga. App. 450, 444 S.E.2d 862 (1994). Also, the explanation, even if racially neutral on its face, must have been used equally to strike persons of both races (e.g., *Ford v. State*, 262 Ga. 558, 423 S.E.2d 245 (1992); *Gamble v. State*, 257 Ga. 325, 357 S.E.2d 792 (1987); and *Williams v. State*, 262 Ga. 732, 426 S.E.2d 348 (1993).

Anecdotal accounts by trial judges indicate that the rule of *Batson v. Kentucky* has often resulted in lengthened voir dire questioning of prospective jurors during which time the attorneys amass racially neutral reasons for racially motivated strikes. It also results inevitably in accusation by attorneys that other lawyers are being untruthful *in judicio* and results in assertions by judges that other judges are incorrectly overlooking "insidious racial discrimination" (*Lingo v. State*, 263 Ga. 664, 437 S.E.2d 463 (1993) Sears-Collins, J., dissenting). These allegations by judges and officers of the court, the lengthy charade of voir dire,

and continuing public cynicism about peremptory strikes, do not inspire confidence in the judicial system.

PROBLEM STATEMENT:

There is a perception among lawyers and lay persons alike that lawyers on occasion wrongfully use peremptory strikes to remove potential jurors from jury panels for racial reasons.

RECOMMENDATIONS:

10. The Commission feels that the legislature and the courts should consider four alternative recommendations as possible means of addressing this issue:

i. Peremptory strikes could be eliminated in civil and criminal cases.

Abolishing peremptory strikes might resolve the extensive cynicism existing among the public and among lawyers about racially motivated strikes and attempts to evade the rule of *Batson v. Kentucky*. If peremptory strikes are abolished, the permissible grounds for strikes for cause should be expanded.

ii. De novo appellate review of trial court decisions on Batson motions could be provided.

The problems with this solution are those with any de novo review at the appellate level. For example, the appellate judges cannot observe the demeanor of the potential jurors as they answer voir dire or the demeanor of the lawyers as they offer their excuses. Moreover, this possible solution does not address the basic problems which include public distrust and the lengthy charade of voir dire to amass racially neutral reasons. Furthermore, with de novo appellate review, voir dire would likely become even more lengthy so that lawyers could accumulate multiple reasons for striking jurors. See generally, *Lingo v. State*, supra; *Strozier v. Clark*, 206 Ga. App. 85, 424 S.E.2d 368 (1992).

iii. Trial judges could conduct voir dire using questions submitted in advance in writing by counsel.

iv. Trial judges could be encouraged to sustain Batson's objections when the questioned strike was made for frivolous, "hunch-type" reasons unrelated to the case at bar.

VIII. JUVENILE JUSTICE SYSTEM

If our American way of life fails the child, it fails us all.

Pearl S. Buck
Children for Adoption, 1964

Section 1: Minority Youth in the Juvenile Justice System

The issue of the involvement of juveniles in crime has been a growing public concern over the past few years. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) estimated that in 1992 juvenile courts in the U.S. handled nearly one and a half million juvenile delinquency cases. In Georgia there were over 100,000 filings in juvenile courts in 1993, nearly 52,000 of which were delinquency filings. In addition to the alarming number of criminal offenses committed by juveniles, another issue of significant concern is the over-representation of minority youth, particularly young African-American males, entering the juvenile justice system. The full extent of the racial disproportionality is most evident in terms of case rates, which are presented in the following table. Both overall and within each offense category, the case rate for black youth was more than double that of white youth and of juveniles of other races.

National Estimates of Juvenile Delinquency Case Rates, 1992 (case rate = cases per 1,000 youth at risk)			
Offense	White	Black	Other Races
All Offenses	44.9	114.2	40.4
Person	8.0	30.1	7.3
Property	27.4	55.7	25.3
Drugs	1.8	8.2	1.3
Public Order	7.8	20.2	6.5

Source: OJJDP *Juvenile Court Statistics 1992 Report*

The OJJDP's *Juvenile Court Statistics 1992* report indicated that, nationally, black juveniles in delinquency proceedings were more likely to be handled formally than were other juveniles. The percentages of petitioned delinquency cases for white and black juveniles were roughly

equivalent (58% and 55%, respectively), and were lower than the percentage of comparable cases involving juveniles of other races (65%). The likelihood of out-of-home placement for minorities (roughly 32%) was greater than that of white juveniles (25%).

The disproportionate number of young African-Americans in the juvenile justice system is especially pronounced in cases regarding drug law violations, where the large number of black youth facing drug charges mirrors the extreme over-representation of African-American adults facing drug charges in the criminal justice system (discussed earlier). Eighty-two percent of drug cases involving black juveniles were handled formally as compared to 51% of drug cases involving white juveniles and 47% of those drug cases involving juveniles of other races.

A 1993 report W. Feyerherm compiled for OJJDP¹ indicated that over-representation of minority juveniles in secure detention facilities is a "general problem across almost all states." This report further noted that, nationally, the degree of over-representation appears lowest at the initial arrest stage and tends to increase as juveniles progress through the juvenile justice system.

The 1990 census indicated that the juvenile population in Georgia (ages seventeen and under) was 64% white, 34% African-American, and 2% of other racial origins. This distribution stands in contrast to the distribution of juveniles in Georgia's juvenile justice system. Some years ago, the Georgia Children and Youth Coordinating Council funded two studies by University of Georgia Professors L. Lockhart and P. D. Kurtz concerning the disproportionately high percentage of African-American youth in Georgia's juvenile justice system. Dr. Lockhart's study, a retrospective analysis of juvenile court records, indicated that 52% of the individuals that entered the juvenile justice system in 1988 were African-American. The study reported that black youth in the juvenile justice system were younger, had more extensive records, and had been charged with more serious offenses than white youth in the juvenile system. The study also indicated that black juveniles were more likely to enter the court system by way of law enforcement, to be detained, and to be represented by court appointed counsel (when represented at all) than were white youth.

Dr. Kurtz's study was a prospective study of juveniles in eight counties who entered and passed through the juvenile justice system in 1990. This study attempted to assess racial differences at several decision points in the juvenile justice system. The percentage of African-American juveniles in this study was: 60% at intake; 65% at adjudication; and 62% at disposition. At the court intake and

1. W. FEYERHERM, *THE STATUS OF THE STATES: A REVIEW OF STATE MATERIALS REGARDING OVER-REPRESENTATION OF MINORITY YOUTH IN THE JUVENILE JUSTICE SYSTEM* (Community Research Assocs. 1993).

adjudication decision points, there appeared to be a weak association between the juvenile's race and the action taken on the case at each point. At disposition, there was the suggestion that black youth seemed more likely to receive more severe dispositions than white youth; however, methodological limitations precluded any legitimate statistical analysis and firm conclusions.

These percentages are comparable to the proportion of African-American juveniles committed to the Department of Children and Youth Services (DCYS). Of the 3,910 juveniles committed to DCYS in the 1994 fiscal year, 67.4% were African-American, 31.3% were white, and 1.3% were of other racial or ethnic backgrounds. The racial disproportionality of juveniles committed to DCYS is further illustrated in the following table, which displays the black/white racial distribution of juveniles committed and the most serious offense for which they were committed. The table shows that for most offenses, the proportion of African-American juveniles committed to DCYS far exceeds their representation in the population.

Department of Children and Youth Services Commitments in the 1994 Fiscal Year							
Most Serious Committing Offense	Total	%B	%W	Most Serious Committing Offense	Total	%B	%W
Murder	13	92	8	Armed robbery	160	95	5
Conspiracy to commit murder	1	100	0	Attempted armed robbery	5	100	0
Manslaughter (voluntary & involuntary combined)	11	100	0	Robbery	98	93	7
Vehicular homicide	1	100	0	Attempted robbery	4	75	25
Kidnapping/false imprisonment	10	90	10	Burglary	494	56	42
Aggravated assault	328	83	16	Attempted burglary	8	88	12
Aggravated assault of corrections officer/Assailing corrections officer	10	80	20	Motor vehicle theft	290	57	40
Conspiracy to commit aggravated assault	1	100	0	Entering auto	112	74	26
Assault—simple assault	21	67	33	Theft: over \$500	193	77	22
Aggravated battery	7	100	0	Theft: \$500 or less	130	64	35
Battery	240	63	36	Theft of a firearm	43	58	42
Affray—fighting in public place	8	100	0	Shoplifting: over \$100/Shoplifting four adjudications	48	81	19
Rape	32	75	22	Shoplifting: \$100 or less	71	61	38

Department of Children and Youth Services Commitments in the 1994 Fiscal Year							
Most Serious Committing Offense	Total	%B	%W	Most Serious Committing Offense	Total	%B	%W
Statutory rape	16	50	50	Credit card fraud	8	88	12
Aggravated sodomy/sodomy	14	28	64	Interference with—damage to gov't property	10	60	40
Sexual battery	17	53	47	Criminal damage	45	58	40
Aggravated child molestation	47	43	55	Criminal trespass	129	63	36
Child molestation	55	38	60	Possession of tool for crime	6	67	33
Enticing children for indecent purposes	1	100	0	Receiving stolen property	4	100	0
Prostitution	1	0	100	Forgery—1st degree	18	33	67
Trafficking in cocaine	2	100	0	Weapons offenses (combined)	203	81	19
Possession for sale of Schedule I—II drugs	150	97	3	Arson	21	29	52
Possession for use of Schedule I—II drugs	71	94	6	Terroristic threats	57	65	32
Possession of marijuana	58	48	50	Stalking	1	0	100
Selling drugs near school/park/public housing	5	60	40	Harassing phone calls/Obscene language or calls/Abusive language	14	64	36
Selling a facsimile of a drug	5	100	0	Driving under the influence	7	0	100
VGCSA—Violation of Georgia Controlled Substance Act	4	0	100	Alcohol intoxication	2	100	0
Possession of drug paraphernalia	1	0	100	Public drunkenness	2	100	0
Reckless endangerment or conduct	11	73	27	Possession of alcohol	21	24	76
Disorderly conduct—reckless conduct	10	80	20	Public indecency	3	100	0
Cruelty to children	3	100	0	Gambling	2	100	0
Escape/aiding an escape	36	36	58	Loitering	5	60	40
Obstruction	92	76	24	Hunting violation	1	0	100
Bribery	1	100	0	Cruelty to animals	3	33	67
Contempt of court	5	20	80	Traffic offenses (combined)	33	56	42
Perjury	1	100	0	Violation of probation, aftercare, or alternate plan	266	54	45

Department of Children and Youth Services Commitments in the 1994 Fiscal Year							
Most Serious Committing Offense	Total	%B	%W	Most Serious Committing Offense	Total	%B	%W
False fire alarm/false report of crime	4	25	75	Unruly/Truancy/Curfew	51	47	53
Giving false name/criminal use of altered ID	10	90	10	Runaway	32	19	75

In order to obtain a current examination of whether and to what extent race or ethnicity either directly or indirectly affect juvenile delinquency adjudication decisions, the Commission contracted with Dr. Barry Ruback of Georgia State University to conduct a research project on factors associated with adjudication decisions in Georgia's juvenile courts. That study had not been completed at the time this report was compiled and printed. It is expected that the study will be available upon request after August 1995.

As discussed in previous chapters, poverty may play a significant role in racially disparate outcomes. Unfortunately, this fact may be more apparent in our juvenile justice system than in any other segment of Georgia's legal system. In a 1987 article in *Crime and Delinquency*,² D. Huizinga and D. S. Elliot estimated that, nationally, 73% to 75% of minority youth fall into the lower socioeconomic class. An article entitled "Disproportionate Minority Representation" in the Spring/Summer 1994 issue of *Juvenile Justice* emphasized the effect that the economic environment in which a juvenile is raised can have on the youth's likelihood of becoming involved in delinquent activity, noting that "African-Americans living in nondisadvantaged areas do not have higher rates of delinquency than whites living in nondisadvantaged areas." Availability of financial resources also shapes the distribution of juveniles penetrating into the juvenile justice system; poor minority families are less likely than wealthier families to have sufficient access to counseling, treatment, and alternate programs to which courts could divert juveniles rather than committing them to state facilities.

2. D. Huizinga & D. S. Elliot, *Juvenile Offenders: Prevalence, Offender Incidence, and Arrest Rates by Race*, CRIME & DELINQUENCY 33, 206-23 (1987).

FINDING:

The percentage of racial and ethnic minority juveniles in the juvenile justice system is grossly disproportionate to their representation in the general population. Juveniles who are members of various ethnic or racial minorities and whose families live in poverty constitute the predominant category of young people in the juvenile justice system.

Notwithstanding the efforts of many dedicated individuals working within the juvenile court system, the Commission has identified a number of issues that should be addressed to ensure equal and fair treatment to all individuals appearing before the court. Through its investigations the Commission found that there is very little, if any, uniformity among Georgia's juvenile court systems. This lack of uniformity caused difficulty in assessing the level of fairness and justice being dispensed and precluded a meaningful comparison of the various systems. Nevertheless, the Commission did identify the following issues of focus for ensuring the fair and equal treatment of all juveniles coming into contact with Georgia's juvenile justice system, regardless of the juveniles' race or ethnic background.

Section 2: Intake Procedures

After a complaint against a juvenile is filed with the court, the complaint undergoes a screening process by an intake officer. The purpose of the intake process is to gather information on the juvenile and the charge to enable the intake officer to recommend action on the case to the judge or associate judge. These recommendations can include dismissal, referral to another agency for services, informal adjustment, filing of a petition, or other appropriate action. The Uniform Juvenile Court Rules lists the following factors as relevant in the intake process: whether the case falls within the court's jurisdiction; whether the complaint is frivolous; whether the juvenile should be detained pending a hearing and, if so, where the youth should be held; whether the case is suitable for informal adjustment; whether the juvenile should be diverted to another agency which can meet her/his needs; and whether a petition should be filed with the court.

Although the Uniform Juvenile Court Rules denotes that these issues should be addressed in the intake process, the rules do not provide specific guidelines or standards for addressing these

points uniformly and consistently across all jurisdictions in the state. The lack of state-wide standards or guidelines governing the intake screening process was also noted in the 1976 *Juvenile Justice Masterplan*, which stated that “[b]ecause intake services are not specifically outlined in the Georgia Code, each county can and does set up its own guidelines.”

The Department of Children and Youth Services has its own set of procedures for its court services workers to follow in conducting intake screenings. Additionally, many courts have outlined their own set of intake procedures; some have their own screening instruments. Other courts, however, may have no written procedures.

Statewide, intake procedures also differ in terms of who actually conducts the intake screening. Specifically, intake in the Georgia’s independent juvenile courts is handled by county paid court employees, whereas DCYS court services workers conduct intake screenings for the remaining counties. In order to ensure that all juveniles are treated alike (regardless of both race/ethnicity as well as location), it is of extreme importance that the juvenile courts and the Department of Children and Youth Services work together to develop and implement a set of procedures for use consistently across all 159 counties.

PROBLEM STATEMENT:

Georgia’s juvenile court system has no state-wide uniform guidelines or standards governing intake screening decisions. The wide range of intake procedures that different courts utilize hold the potential for subtle differences in cases involving minority juveniles.

In 1993, Dr. George Napper, then Commissioner of the Department of Children and Youth Services, submitted a statement to the Commission strongly recommending the establishment of standards and guidelines. He stated that such “standards will go a long way to providing fair and equitable treatment and ensure a consistency in the handling of youth regardless of their race.” He noted that a number of years ago the Council of Juvenile Court Judges and the former Department of Youth Services jointly developed standards and guidelines for intake, probation, and detention. These standards were not mandated, and in his opinion “have had minimal impact.” He suggested that the Department of Children and Youth Services and the Council of Juvenile Court Judges update and improve

these standards and require their implementation, possibly through the uniform rules of court.

By way of its Attitude Surveys, the Commission sought to ascertain the perceptions of the judges and attorneys regarding differential treatment of minority juveniles. Among the judges and attorneys who handle juvenile matters in Georgia, 63% of non-minority attorneys and 85% of judges believed that, given similar cases under similar circumstances, there is no difference in the likelihood of minority and non-minority juveniles receiving informal adjustments. About 71% of minority attorneys who handle juvenile cases, however, felt that non-minority juveniles are more likely to receive informal adjustments than are minority juveniles. There was a similar divergence in perceptions regarding placement in early diversion programs, with 68% of minority attorneys believing that non-minority juveniles are more likely to be placed in early diversion programs while 60% of non-minority attorneys and three quarters of the judges believing that there is no racial difference in placement in early diversion programs.

RECOMMENDATION:

1. *Establish a uniform intake procedure to be followed by all juvenile courts.*

The Implementation Committee should work with the Council of Juvenile Court Judges to develop and establish this intake procedure by way of uniform rules of court or, if necessary, through statute. The Department of Children and Youth Services, in those counties where it serves as the intake body, cooperate in defining and implementing the same intake procedures.

There has been consistent support for the establishment and implementation of intake guidelines and standards. In addition to such a recommendation in the 1976 *Juvenile Justice Masterplan*, the 1985 Fulton County/Atlanta Commission on Juvenile Justice strongly recommended the development and implementation of standards and criteria for intake. That commission also recommended that any intervention prior to adjudication should be based on carefully established and monitored criteria.

In 1990 the National Council of Juvenile and Family Court Judges acknowledged the importance of specifying criteria and guidelines for use in making intake decisions, and recommended

that judges become involved in the development of such guidelines and criteria. That council also recommended that prosecutors establish criteria and guidelines for use in charging decisions.

Section 3: Legal Representation for Juveniles

Current perceptions held by Georgia's attorneys and judges concerning the existence and extent of racial disparity in the juvenile justice system were consistent with their perceptions of disparity in other areas of the justice system. The Attitude Surveys indicated that 63% of minority attorneys believed that minority juveniles are represented by counsel less often than are non-minority juveniles. About a quarter of the non-minority attorneys and only about 5% of judges similarly felt that minority juveniles are less often represented by counsel. Eighty-two percent of juvenile court judges expressed their belief that minority juveniles are no more likely to waive their right to counsel than are non-minority juveniles. Over 90% of the juvenile and superior court judges and three quarters of non-minority attorneys felt that judges encourage minority juveniles to request counsel equally as often as they encourage non-minority juveniles.

Previous studies of the Georgia juvenile court system indicated that legal representation was an area where (for those economic reasons discussed in the earlier chapter on legal representation) potential racial/ethnic bias could be present. The aforementioned 1990 prospective study of Georgia's juvenile justice system (see page 192) reported that of the juveniles in their study, those represented by private counsel received less severe dispositions than those represented by public defenders and those not represented at all. Half of the youths in that study had no representation; 42% were represented by a court appointed attorney. Only 8% were represented by privately retained counsel.

In 1991, the Georgia Indigent Defense Council, the Children and Youth Coordinating Council, and the Council of Juvenile Court Judges jointly conducted a survey of Georgia's juvenile justice system. Included in the survey were the judges, clerks, attorneys, court service workers, and detention facility directors in 43 of the (then) 45 judicial circuits. This survey indicated that while most of the juveniles that requested an attorney were

provided with one (even in cases where the juvenile's parents/guardians may not have met the qualifications for indigency), the number of juveniles actually represented by counsel was very small; "legal representation at detention hearings is the exception, rather than the rule." Survey respondents indicated that the majority of the juveniles are not represented because they waived their right to counsel. Respondents in 28 of the 50 sites surveyed stated that over half of the eligible juveniles waived their right to counsel; respondents in twelve of these sites indicated that greater than three quarters of eligible youth waived their right to counsel. The survey further indicated that in three of the fifty sites judges automatically assigned counsel to juveniles whether or not the youth requested an attorney.

In light of allegations that the outcomes of juvenile proceedings differ depending on whether or not the juvenile is represented by counsel (whether because of economic factors or because of a juvenile's waiver of the right to counsel), it may be argued that there is a need to implement procedures to safeguard against potential disparate outcomes. The need for such procedures is especially pertinent to minority youth, in that they represent such a large proportion of the juveniles coming into the juvenile justice system.

RECOMMENDATION:

2. Any child charged with a felony level offense, or who faces the risk of detention beyond the initial detention hearing, should have mandated legal representation. In all other cases, juveniles should not be able to waive their right to counsel without demonstrating a full understanding of this right and the ramifications of its waiver. A rule specifying in detail the appointment of counsel and the conditions for waiver of counsel should be added to the uniform rules of court. Adequate funding for legal representation should be provided.

The Department of Children and Youth Services supports this recommendation, stating its belief that adequate legal representation for minority youth is a key factor in reducing racial and ethnic bias in Georgia's juvenile court system. A number of states (e.g., New York) have amended their statutes governing representation of juveniles to make the waiver of counsel more difficult. As reported in *America's Children at Risk: A National Agenda for Legal Action*, these statutes presume that

juveniles do not possess adequate knowledge or maturity to intelligently waive their right of counsel.

In 1994, the General Assembly amended the Georgia Indigent Defense Act to formally specify juveniles' right to legal representation in juvenile proceedings. This Code section states that this right to counsel applies in "all actions and proceedings within the juvenile courts of this state ... including but not limited to actions involving delinquency, unruliness, incorrigibility, deprivation, and termination of parental rights. Nothing in this Code section shall be interpreted as applying to guardians ad litem."

The 1991 survey of juvenile courts conducted by the Georgia Indigent Defense Council, the Children and Youth Coordinating Council, and the Council of Juvenile Court Judges indicated that at that time there was no state or locally sponsored legal training specifically attuned to the practice of law in juvenile courts. The survey report noted that "[a] majority of the attorneys surveyed recognized the need for such training and indicated that they would participate in any workshops developed to address this void."

Emphasizing the importance of having specially trained attorneys to provide the much needed representation of children in juvenile court, the Georgia Indigent Defense Council allocated a quarter of its appropriations for the 1995 fiscal year to counties to improve representation of juveniles under this legislation. The implementation of this law included a focus on: 1) developing guidelines and standards governing the qualifications and appointment of counsel in juvenile proceedings; 2) training for both experienced and new attorneys taking appointments in juvenile proceedings; 3) reducing the number of juvenile cases in which counsel is waived; and 4) setting up a resource center for attorneys providing representation in juvenile proceedings.

RECOMMENDATIONS:

3. Establish guidelines and standards governing the qualifications and training of attorneys (including prosecutors) involved in juvenile proceedings, including continuing legal education requirements in juvenile law and procedure.

The Implementation Committee should follow and evaluate the Georgia Indigent Defense Council's efforts to improve the provision of legal representation to juveniles. The

Implementation Committee should also evaluate the assessment findings of the Georgia Supreme Court Child Proceedings Project with respect to representation in deprived cases. The Implementation Committee should work with the State Bar of Georgia, the Council of Juvenile Court Judges, and the Georgia Indigent Defense Council to develop the guidelines and standards concerning attorney qualifications and training.

4. The State Bar of Georgia and local bar associations throughout the state should be encouraged to develop a plan to recruit and train lawyers to provide volunteer legal counsel to juveniles in those jurisdictions where financial resources are not adequate.

The Implementation Committee should work with the State Bar to develop additional means of incorporating information on and training in juvenile court matters. Toward this end, the Commission suggests that provisions be made so attorneys can fulfill part of their continuing legal education hours by taking courses in juvenile practice. The Commission also endorses the addition of juvenile components to the Bridge the Gap program as well as an increased emphasis on juvenile law in the Bar Exam.

Section 4: Detention of Juveniles Being Tried as Adults

The School Safety and Juvenile Justice Reform Act of 1994 states that the "safety of students enrolled in schools and the citizens of Georgia will be enhanced by requiring that certain juvenile offenders who commit certain violent felonies be tried as adults in the superior court and sentenced directly to the custody of the Department of Corrections for placement in designated youth confinement units operated by the Department of Corrections." This act provides that the superior court shall have exclusive jurisdiction over any matter concerning juveniles between the ages of 13 and 17 charged with: murder; voluntary manslaughter; rape; aggravated sodomy; aggravated child molestation; aggravated sexual battery; or armed robbery if committed with a firearm.

Since May 1, 1994, when this law went into effect, the Georgia Indigent Defense Council has been tracking the juveniles being held for trial in superior courts. As of April 30, 1995, GIDC reported a total of 500 juveniles had been held for trial in superior court. Of those 500 juveniles, 459 had been arrested and

detained for offenses covered in the 1994 School Safety and Juvenile Justice Reform Act. By far, the largest offense category was armed robbery committed with a firearm (242 juveniles).

Complete information on the racial distribution of juveniles held for trial in superior courts, however, is lacking. The Georgia Indigent Defense Council reported that the race of 259 (52%) of the 500 juveniles was unknown. For the 241 cases in which race information was available, however, 82% were minority juveniles (194 were black, two were Hispanic, and one was classified as being of other racial background).

Clearly the percentage of minority juveniles who are being tried as adults under the provisions of the 1994 School Safety and Juvenile Justice Reform Act is disparately large relative to the proportion of minority youth in the general population. This over-representation of minority youth is of considerable concern; any systemic problems in the processing of these cases will differentially impact minority juveniles. Given the serious nature of the offenses which are encompassed under this law as well as the severe consequence the law prescribes (*i.e.*, being tried as an adult), the poignancy of this differential impact is heightened.

In a Winter 1995 *YLS Newsletter* article, Eric Kocher, then Director of the Georgia Indigent Defense Council, discussed logistical problems that have arisen. He stated that "problems include the timely appointment of counsel, access to counsel, and the training and expertise needed by counsel to properly represent children. The children arrested for offenses in Georgia's 159 counties are detained in 20 Regional Youth Development Centers around the state. Many of them are necessarily held long distances from the county in which they were arrested and from the attorney who has been appointed to represent them. The fact that they are not held within the county and often are taken by law enforcement directly to the Regional Youth Development Centers means that local courts and indigent defense programs are not aware that a child has been arrested so that counsel can be appointed. [GIDC] has identified over 10 children that were not appointed counsel for at least a month after arrest. Even once an attorney is appointed the fact that the child is being held in a distant Regional Youth Development Centers means that the attorney may have difficulty communicating and scheduling time with his or her client."

He further noted that if the roughly 22% of the juveniles then being held for sex offenses under this law were tried and

sentenced in superior court, they would not have the same availability of treatment services as they would if their cases had been handled in juvenile court. Mr. Kocher recommended that such offenders “should either be transferred back to juvenile court by a superior court judge for disposition or provisions should be made by the General Assembly for treatment programs to be developed for all children tried as adults.”

The Georgia Indigent Defense Council report also indicated that only 83 of these 500 cases had been finally resolved. Of the disposed cases, 22 were dismissed, 25 had been transferred to juvenile court, 30 resulted in a plea, and six went to trial. Through communications with the Department of Children and Youth Services, the Commission found that some juveniles who are now under the superior court jurisdiction wait in Regional Youth Detention Centers from nine to twelve months pending trial.

PROBLEM STATEMENT:

There are no uniform procedures governing the detention and processing of juveniles held for trial in superior court under the School Safety and Juvenile Justice Reform Act of 1994.

RECOMMENDATION:

5. Establish uniform guidelines and standards governing the tracking and handling of cases of juveniles arrested for crimes for which they will be treated as adults to ensure protection of fundamental rights, prompt handling of these cases and early determination of whether the case should be transferred to juvenile court.

Section 5: Mental Health and Substance Abuse Services

As a contributing author for the 1992 book entitled *Responding to the Mental Health Needs of Youth in the Juvenile Justice System*, M. R. Isaacs³ wrote that there are “two simple and compelling facts about children of color and the mental health and juvenile justice systems . . . (1) Children and adolescents of

3. M.R. ISAACS, ASSESSING THE MENTAL HEALTH NEEDS OF CHILDREN AND ADOLESCENTS OF COLOR IN THE JUVENILE JUSTICE SYSTEM: OVERCOMING INSTITUTIONALIZED PERCEPTIONS AND BARRIERS (1992). In J. J. Coccozza (Ed.) *Responding to the Mental Health Needs of Youth in the Juvenile Justice System*. The National Coalition for the Mentally Ill in the Criminal Justice System.

color are overrepresented in the American juvenile justice system, given their proportions in the overall American population. This disproportionate representation is increasing, not decreasing. (2) Children and adolescents of color are underserved and/or inappropriately served by the child mental health system. When services are received, they tend to be in the more restrictive settings with the mental health system, i.e., state psychiatric institutions and/or long-term residential centers" (p. 141).

Two issues are frequently raised in regard to access of mental health and substance abuse services for minority youth in the juvenile justice system. The first relates to allegations that minority youth brought before the courts are more likely to be deemed delinquent whereas non-minority youth have a greater tendency to be deemed in need of mental health counseling; in short, some contend that the actions which brought a minority juvenile into court are more likely to be considered criminal while the actions which brought a white juvenile into court are more likely to be considered indicative of a need for treatment. In her writings referenced above, M. R. Isaacs contends that "white juveniles are more likely to be diagnosed with conduct disorders and thus be referred to the mental health system than children of color with the same characteristics who may end up in a secure correctional setting."

The second issue concerns whether minority and non-minority youth in the juvenile justice system have equal access to mental health services and substance abuse treatment programs. Some studies have reported that minority juveniles receive more severe diagnoses than do non-minority youth. Other indications have pointed to an apparent tendency for minority youth in need of mental health services to be referred for treatment in institutional settings whereas white youth appear to be referred more often to community-based treatment alternatives.

As before, the issue of poverty cannot be overlooked in regard to the overrepresentation of minority youth in the juvenile justice system and their inability to privately procure adequate treatment services (e.g., lack of health insurance). The federal Office of Technology Assessment published a study in 1986⁴

4. Office of Technology Assessment (1986). *Children's Mental Health: Problems and Services*. Washington, D.C.: U.S. Government Printing Office.

entitled *Children's Mental Health: Problems and Services* which concluded that "[b]eing poor and being a member of a minority group are environmental stressors that may pose risks to children's mental health Although the relationships are correlational rather than causal, increasing evidence about the effects of psychosocial stress on both physical and mental health supports the view that poverty and minority status pose risks for mental health" (p.50).

A large number of studies have been cited as indicating a significant prevalence of developmental, mental, emotional, and/or behavioral disorders among youth in the juvenile justice system. The following table provides the racial distribution of Georgia youth, by age, referred by juvenile courts for mental health services.

Georgia Juvenile Court Mental Health Referrals to Community Mental Health Programs and State Hospitals During the 1994 Fiscal Year								
Age	Community Mental Health System				State Hospitals			
	Black		White		Black		White	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
0—12	98	39.4	151	60.6	23	60.5	15	39.5
13—15	320	38.2	517	61.8	77	37.2	130	62.8
16—17	209	33.8	409	66.2	47	38.2	76	61.8
Total	627	36.8	1077	63.2	147	39.9	221	60.1

Source: DHR Division of Mental Health, Mental Retardation, and Substance Abuse

There were also a total of 19 referrals to the community mental health system and four referrals to state hospitals for other racial/ethnic groups such as Puerto Rican, Mexican-American, and Asian-American.

A 1990 study (initiated by the Juvenile Justice Coordinating Council) of emotional problems in Georgia juvenile delinquents found that over 80% of their sample of 114 delinquent youth met the qualifications of psychological disorder as specified by the American Psychological Association's Diagnostic and Statistical Manual (third edition revised). This study also reported that "the proportion of youth in need of clinical intervention in this sample was quite high while the proportion currently placed in facilities where clinical intervention was available was quite low. Information provided by the Department of Human Resources Division of Mental Health, Mental Retardation, and Substance

Abuse (MHMRSA) indicated that the cooperative arrangements with the Department of Children and Youth Services for the provision of mental health and substance abuse services committed to DCYS are limited.

In its examination of equal access and availability of mental health services and substance abuse treatment for minority youth in Georgia's juvenile justice system, the Commission noted a number of issues which deserve some note. First, Georgia lacks a set of standards or guidelines for adequate and consistent screening of juveniles coming into the juvenile justice system and for determining the appropriate treatment referrals for those deemed in need of such services.

Additionally, both the Department of Children and Youth Services and the Division of Mental Health, Mental Retardation, and Substance Abuse agree that difficulties have existed in the coordinating of services between agencies. The August 1994 *Georgia Strategic Plan for Assessment and Treatment of Mental Health Problems in Juvenile Justice Program Participants* made the following points regarding fragmentation and duplication of services: "Duplication of services is necessitated due to the inability to share data between agencies. Currently agencies plan and budget in isolation which also results in duplication of services and unnecessary competition among agencies for limited funds. There is fragmentation of services among different agencies with differing governing structures and mandates. There is a lack of coordination between institutional and community service providers."

RECOMMENDATIONS:

6. Develop uniform guidelines and standards for use in the juvenile justice system to determine whether children should be diverted for mental health evaluation and/or treatment. There should be uniform guidelines and standards governing the referral of children suffering from mental illness or mental retardation or substance abuse to the Division of Mental Health, Mental Retardation and Substance Abuse (MHMRSA) in the Department of Human Resources. The purpose of these guidelines would be to assure appropriate access to treatment for each individual while maintaining an emphasis on personal accountability and responsibility.

7. The Juvenile Courts, the Department of Children and Youth Services, and the Division of Mental Health, Mental Retardation, and Substance Abuse should formulate a plan

designed to ensure that juveniles receive outpatient and residential mental services on a "needs" basis and without regard to race, ethnicity or economic status.

Section 6: Diversion and Treatment Programs

Consistent with the Commission's findings of the disproportionate number of minorities in the adult correctional system are similar findings that minority youth are overrepresented in Georgia's juvenile justice system as compared to their representation in the population. As noted earlier, 34% of Georgia's juvenile population (ages seventeen and under) is African-American. The percentage of African-American youth committed to DCYS in the 1994 fiscal year, however, was double that proportion (67.4% of the 3,910 total DCYS commitments). Juvenile males represented 85% of all DCYS commitments; of all juvenile males who were committed, 69% were African-American. Of the 576 females committed to DCYS, 58% were African-American. Property offense cases constituted the largest percentage of commitments (45%), with the next largest percentage of commitments (16.1%) being for violation of probation or alternate plan. Two percent of total 1994 fiscal year DCYS commitments were status offenders. As the following table illustrates, the overrepresentation of African-American juveniles is most disproportionate in institutional placement, the most severe and restrictive of commitments.

FY 1994 DCYS Commitments						
Type of Commitment/Placement	White		Black		Other	
	Number	Percent	Number	Percent	Number	Percent
Institutional Placements	193	18.5	842	80.5	11	1.1
Residential Alternate Placements	497	44.0	620	54.9	13	1.2
Non-Residential Alternate Plans	533	30.7	1173	67.6	28	1.6
Total Commitments	1223	31.3	2635	67.4	52	1.3

Source: DCYS Program Statistics—FY 1994

Additionally, the economic issues addressed in the earlier Criminal Justice System chapter are acutely applicable to the juvenile system as well. Availability of financial resources to procure private treatment is often cited as a factor which contributes to the overrepresentation of minority youth in the

juvenile justice system. Arguably, those families who cannot afford private counseling and treatment are at a disadvantage as compared to more affluent families; poorer families cannot provide such treatment as an informal adjustment or dispositional alternative as an option for a judge's consideration. Often, the only type of treatment available for poor minority youths is commitment to the care of the Department of Children and Youth Services.

The national Coalition for Juvenile Justice, in its 1993 annual report, contended that across the country a "[l]ack of medical insurance precludes poor minority youth from access to private adolescent treatment centers or programs, effectively relegating them to more restrictive secure correctional confinement when the court deems highly structured supervision and/or treatment necessary." Numerous Georgia attorneys and judges responding to the Attitude Surveys expressed their views on the interplay of economic and racial factors in the juvenile justice system. A non-minority attorney wrote "[w]hite children fare far better than minority children in juvenile court due to their better economic status; white children are more likely to have health insurance which provides access to treatment."

PROBLEM STATEMENT:

Private treatment and diversion programs are often inaccessible to juveniles whose parents have limited financial resources. This has a greater impact on minorities in that they represent a large proportion of poor people.

A 1987 *Crime and Delinquency*⁵ article estimated that, nationally, the rate of minority youth incarcerated in public institutions was three to four times greater than for non-minority youths. The corollary to this statement appeared in a 1990 special issue of the *Juvenile & Family Court Journal* focusing on minority youth in the juvenile justice system, which stated that the percentage of non-minority youths placed in private facilities is noticeably greater than the percentage of minority youths placed in private facilities.

An article entitled "Disproportionate Minority Representation" in the Spring/Summer 1994 issue of *Juvenile Justice* reported

5. B. Krisberg et al., *The Incarceration of Minority Youth*, CRIME & DELINQUENCY 33, 173-205 (1987).

that in 1991, based on data from the National Juvenile Court Data Archive, white youth constituted 34% of juveniles in public juvenile facilities while the number of minority youth was notably larger than their representation in the population (44% of juveniles in public juvenile facilities were black, 18% were Hispanic). The article further noted that in “training schools—the most restrictive environment—black juveniles comprised 47% of the population. In private facilities—often less restrictive and crowded—black juveniles comprised 32% of the population and white juveniles 57%.”

The financial resources of juveniles’ parents or guardians influence the type and quality of services available to them. The care and treatment that juveniles obtain through private programs, paid for by their parents or guardians, are usually not hampered by the limitations that state-run programs and facilities face (*e.g.*, limited programs, space, and funding). Because many of their families lack sufficient financial resources, African-Americans in the juvenile justice system are less likely to have access to private treatment services than are their white counterparts. This inaccessibility of treatment options disparately impacts minorities in that a large proportion typically have lower incomes. For these individuals, the only treatment available is through state-funded programs.

Although the Department of Children and Youth Services requires that all private providers sign a civil rights compliance statement that they will render services without regard to racial or ethnic status, too often the programs’ ability to provide private treatment depends on a family’s ability to pay for part or all of that treatment. For example, private treatment for substance abuse is often readily available, but only to those with adequate financial resources. Many minority families involved in the juvenile justice system simply cannot afford to pay for such treatment. Because state-funded programs are often the only programs poor families can afford, and because a disparate number of minority families are poor, most minority juveniles are relegated to state-funded programs.

RECOMMENDATION:

8. The juvenile courts, the Department of Children and Youth Services, the Division of Family and Children Services, and the Mental Health, Mental Retardation, and Substance Abuse Division of the Department of Human Resources should strive

to ensure that all juveniles receive treatment of equal quality regardless of the parents' or guardians' financial resources.

In 1990 the National Council of Juvenile and Family Court Judges made a similar recommendation: "Juvenile court services should be adequately funded by appropriate funding sources so all juveniles receive adequate and equal treatment regardless of the availability of private insurance or family resources."

Because of their limited finances, many minority parents or guardians are often unable to attend interviews or meetings regarding their children. For example, some lower-income parents lack transportation or are unable to miss work to attend such meetings. Additionally, many parents today unfortunately lack the parenting skills or the motivation to adequately care for and supervise their children. These factors sometimes are taken into consideration in deciding how to handle cases; one juvenile court judge responding to the Attitude Survey noted the "difficulty in placement for minority children because of economic circumstances or stability of family situation." Ways must be found to strengthen the family. If this cannot be done, youths must be given an alternative home with adequate supervision.

RECOMMENDATION:

9. Funding should be allocated to coordinate services provided by various service agencies to promote the involvement of parents or guardians in their juvenile's court proceedings and diversion and treatment programs (e.g., assisting in transportation for those families in need). Juveniles should not be excluded from diversion programs simply because of inability or failure of parents or guardians to be present during interviews.

The 1990 prospective study of the Georgia juvenile court system conducted by Dr. Kurtz (reviewed on page 192) attempted to assess court services workers' perceptions of juveniles in the cases they handled. The study implied that court services workers tended to view white juveniles as being more "cooperative" and more "remorseful" than African-American juveniles. In addition, the Commission heard statements that certain differences in demeanor stem from different cultural factors. The Commission is concerned that such factors may influence minority juveniles' placement in and successful completion of diversion and treatment programs.

RECOMMENDATION:

10. Juveniles should not be excluded from diversion programs simply because the juvenile exhibits an attitude perceived as uncooperative or unfamiliar to intake personnel. Furthermore, there should be no "flunk out" of diversions or treatment programs due to poor attitude or failure to cooperate by the child. There should be a series of diversion or treatment programs of increasing restrictions and monitoring; this would allow for a juvenile to be shifted to a more appropriate diversion/treatment program rather than being committed to a secured institution. Being committed to a secured institution should result from "breaking rules," not from simply maintaining a "bad attitude."

Community-based programs are a means to provide diversion and commitment alternatives by which juveniles can receive treatment and rehabilitative services without having to be institutionalized. Such programs provide a "broader range of dispositional alternatives, many of which are far more cost effective than restrictive placements, can also reduce incarceration and prevent deeper penetration into the system for many children of color" (1993 annual report of the national Coalition for Juvenile Justice). The importance of community-based alternative diversion and treatment programs, which generally allow juveniles to remain in their communities and reside in their own homes, has long been recognized here in Georgia. The 1976 *Juvenile Justice Masterplan* endorsed such programs; the Fulton County/Atlanta Commission on Juvenile Justice, in its 1986 report, strongly recommended the development of community-based alternatives. Based on the findings of his prospective study of Georgia's juvenile court system (see page 192), Dr. Kurtz also recommended an increased emphasis on community-based programs.

The Department of Children and Youth Services currently operates a number of community-based programs. The following table denotes the percentage of African-American and white juveniles in each type of community-based program DCYS provides. Intensive supervision programs are designed to provide strict supervision, counseling, training, and progressive discipline while allowing the juvenile to remain in his or her home. In-home supervision is an intensive supervision program which allows youth, usually placed on electronic monitors, to remain in the home awaiting court hearings and proceedings. Community

treatment centers are non-residential programs designed to provide individualized treatment plans for delinquent and unruly youth. Group homes, contract homes, and attention homes are residential treatment facilities offering treatment and rehabilitation services (for certain delinquent and unruly youth committed to DCYS) in a non-secure residential setting as an alternative to institutionalization.

Community schools are alternative schools for committed delinquent and unruly juveniles who have a history of school-related problems. For juveniles requiring more specialized or intensive treatment than currently exists in other programs, DCYS purchases services through specialized residential programs. Short-term treatment programs provide structured residential treatment within secure Regional Youth Detention Centers for periods of up to four months for those committed juveniles who are not in need of long-term institutionalization but who are not presently appropriate for less-structured community-based programs.

For comparison, the percentages of African-American and white juveniles in the more restrictive institutional programs are also included. Regional Youth Detention Centers are secure detention facilities for holding juveniles prior to adjudication. Youth Development Campuses are secure facilities for delinquent youth committed to the care and supervision of the state. Recall that overall, African-American juveniles represented 67.4% of all DCYS commitments but constitute only 34% of Georgia's juvenile population.

Racial Distribution of Youth Served by DCYS in FY 1994		
Institutional Programs	% Black	% White
Youth Development Campuses:	80.3	19.7
Regional Youth Detention Centers	63.8	36.2
Community-Based Programs		
Attention Homes	45.6	54.4
In-Home-Supervision	55.7	44.3
Short Term Treatment Programs	34.8	65.2
Contract Homes	57.1	42.9

Racial Distribution of Youth Served by DCYS in FY 1994		
Community Treatment Centers	73.3	26.7
Community Schools	94.1	5.9
Group Homes	75.3	24.7
Specialized Residential Programs (DCYS Funded)	45.8	54.2
Intensive Supervision	69.7	30.3

Source: DCYS Program Statistics—FY 1994

RECOMMENDATION:

11. Increased funding should be provided for the development of community-based alternatives and diversion programs, to facilitate the placement and treatment of juveniles whose parents have limited financial resources.

This may be accomplished through the provisions of Senate Bill 560, which specifies that any juvenile court may establish within its geographical area a community-based risk reduction program to utilize available community resources in the assessment and intervention of cases of delinquency, deprivation, and unruliness.

Wilderness programs represent one of a number of types of specialized residential programs funded by DCYS. For the six wilderness programs that DCYS supported in 1994, the percentage of African-American juveniles served ranged from 27.6% to 65.8%. These private programs reserve the right to decide whether they will accept the referrals from DCYS. In this regard, a representative from one of the wilderness programs stated that while this particular program customarily strikes established arsonists and sex offenders because of a lack of staff expertise to deal with such cases, all other referrals are accepted.

The Commission investigated concerns that some such programs contracting with Georgia and other states to handle children and youth may be racially discriminatory in the referrals they accept. In response to inquiries by the Commission, DCYS indicated that all group care facilities and private family homes in which the state places juveniles must sign an agreement which includes a non-discriminatory clause. At the time of the Commission's inquiry that 1,524 juveniles (in during the 1993 fiscal year) were placed in private provider programs

(including group residential facilities such as wilderness programs, residential drug treatment facilities, contract homes, and private family providers), 51% of whom were African-American.

RECOMMENDATION:

12. As an alternative to confinement in larger institutions, DCYS should be encouraged and provided funding to continue and expand its program of providing (under contract with public and private organizations having a record of good performance) alternatives such as wilderness institutes so children may receive, in an outdoor environment, more individualistic evaluations, counseling in personal relations, education, career guidance, and aftercare.

The Commission also heard concerns about the educational needs of juveniles under the supervision of the Department of Children and Youth Services. Some individuals expressed particular concerns for juveniles detained in Regional Youth Detention Centers. In the process of their detainment pending adjudication and disposition proceedings, these juveniles: 1) are held in Regional Youth Development Centers for varying lengths of time, precluding much continuity in their schooling; 2) come from different schools, classes, and teachers and thus may differ widely in their educational progress and needs; 3) are detained in over-crowded facilities which often may have neither the classroom space nor a sufficient number of teachers.

The educational needs of those juveniles committed to the Department of Children and Youth Services on a longer-term basis, however, are somewhat better addressed. DCYS has the authority to and does establish appropriate educational programs within its facilities. The agency informed the Commission that it has developed standards to meet the educational needs of juveniles, but that funding sufficient to implement these standards is lacking. The Department of Children and Youth Services also indicated that it is currently working with the Department of Education to strengthen educational programs for juveniles committed to DCYS facilities.

RECOMMENDATION:

13. The Department of Children and Youth Services should be provided additional funding for teachers, special education teachers, education equipment, textbooks and other resources

necessary to implement its educational program and standards under its school district authority. Technical training should also be provided where appropriate to qualified juvenile offenders.

Adequate aftercare programs are at least as important as community-based treatment and diversion programs. In 1990, the National Council of Juvenile and Family Court Judges greatly emphasized the need for more transition and aftercare services. The Council noted that such services are consistent with both individual treatment and public protection goals “because they include high levels of surveillance, increased restrictions on personal freedom, and individual accountability.” In its 1993 annual report, the national Coalition for Juvenile Justice went so far as to state that “[m]any of the programs in which children of color are placed are weak in the aftercare phase and have too little emphasis on reintegrating the youth into the community on release, an essential element of a successful program.

RECOMMENDATION:

14. Funding should be provided to DCYS for staffing of strict and intensive aftercare programs designed to support and monitor youth during their reintegration back into their homes and communities. A very important component of effective aftercare will be a strong connection between treatment programs and organizations supporting those racial and ethnic communities. The participation and cooperation of such organizations should be encouraged so as to ensure services to minority youth, both during as well as following diversion and/or probation programs.

In its 1985 report, the Georgia Commission on Juvenile Justice discussed the need for intensive aftercare services and made the recommendation that more such programs be provided. Regarding drug offense cases, increased emphasis should be directed at treatment rather than having punishment as the predominant focus.

Section 7: Over-crowding / Under-staffing

Based on DCYS Programs Statistics for the 1994 fiscal year, nearly all of the Department of Children and Youth Services facilities and programs are operating at or above their capacity. On average, Youth Development Campuses (YDCs) operated at 103% of capacity; all of the five YDCs operated at 97% capacity

or greater, with three operating at greater than 100% capacity. Community treatment centers (CTCs) operated at an average of 122% capacity; twelve of the twenty CTCs operated at greater than 100% capacity. Group homes operated at 111% of capacity and intensive supervision programs operated at 154% of capacity. DCYS community schools, however, operated at 70% of capacity.

Regional Youth Detention Centers (RYDCs) were similarly over-crowded. The Department of Children and Youth Services indicated that the agency receives an average of 70 to 80 cases per week under the 90-day detention provision of the School Safety and Juvenile Justice Reform Act of 1994. The agency's facilities, however, are not equipped to deal with this influx. To help handle the number of juveniles to be detained, the Department of Children and Youth Services has arranged for juveniles who would have been held in an Regional Youth Development Centers to be held in local jails in certain counties.

Over-crowding in these facilities disproportionately impacts minorities in that African-American youth constitute such large proportions of these populations. For example, for the 1994 fiscal year, African-Americans comprised the following percentages in DCYS facilities: 81% of YDC juveniles; 73% of juveniles in community treatment centers; 51% of juveniles in group homes; 70% of juveniles in intensive supervision programs; and 94% of the community school population.

RECOMMENDATION:

15. The Department of Children and Youth Services should be provided the funding necessary to eliminate overcrowding and under-staffing at Regional Youth Development Centers and Youth Development Campuses.

The Department of Children and Youth Services has been funded for several new secure facilities, but acknowledges that simply adding more bed space today will not adequately address future problems of overcrowding. As an additional means to help reduce overcrowding, the Department of Children and Youth Services has requested (but has as yet not received) significant financial resources to develop community-based programs.

Another means of addressing the over-crowding issue is to develop specific instruments to assess the need for detention. Such risk assessment instruments can be used during intake screening to reduce the number of individuals unnecessarily detained. Instruments assessing mental health needs can also

help by ensuring that those in need of such services are diverted to appropriate programs rather than being held in a secure detention facility.

Section 8: Cultural Diversity Training

As noted above, the Kurtz prospective study of the Georgia juvenile court system (discussed on page 192) reported differences in the way that white and black juveniles were perceived by court services workers. According to this study, court services workers tended to view African-American juveniles as less "cooperative" and less "remorseful" than white juveniles. To the extent that cultural differences between court services workers and the juveniles they serve influence the way those juveniles are perceived, there is the possibility that cultural biases may impact the decisions those court services workers make.

Cases involving minority juveniles might be resolved more equitably if juvenile court system workers were more sensitive to cultural differences. In his 1993 statement to the Commission, then DCYS Commissioner Dr. Napper indicated that some "[c]ompetency-based training to enhance cultural sensitivity" is included as a part of the initial training for all new DCYS employees. Although there was general agreement that such training is more effective if conducted periodically rather than solely as initial training, it was noted that state agencies lacked the appropriate funds to implement such training.

RECOMMENDATION:

16. The Department of Children and Youth Services and the Division of Mental Health, Mental Retardation and Substance Abuse (MHMRSA) of the Department of Human Resources should receive adequate funding to conduct cross-cultural diversity and other training for its personnel, particularly for those with direct contact with minority juveniles and their families (e.g., intake and aftercare workers). The same kind of training should be required of all juvenile court judges and personnel.

The Implementation Committee should work with the Department of Children and Youth Services, the DHR Division of Family and Children Services, the Division of Mental Health, Mental Retardation and Substance Abuse, the Council of Juvenile Court Judges, and community organizations to explore

creative ways of implementing such training, such as pooling funds and obtaining and using self-training materials.

In 1990 the National Council of Juvenile and Family Court Judges recommended diversity training for judges and intake officers.⁶ The Council also recommended that all "court-appointed counsel and public defenders should be specially trained or experienced in racial, cultural, and ethnic values." The Coalition for Juvenile Justice, in their national 1993 annual report, also endorsed cultural and ethnic diversity training for all participants in the juvenile justice system.

Section 9: Court Records and Systematic Data Collection and Management

Although the necessity of systematically developing accurate statewide integrated databases was discussed in earlier chapters of this report, the relevance to the juvenile court deserves further explication. The importance of a uniform, consistent, integrated, statewide juvenile court record system and database cannot be overemphasized, not only for Georgia but nationally as well. In 1990, the National Council of Juvenile and Family Court Judges recommended "that all states develop a strategy that would facilitate the collection of more accurate, complete, and meaningful data regarding the juveniles processed through their systems."

The retrospective study by Dr. Lockhart (reviewed on page 192) discussed at length problems associated with the lack of standardized data maintenance procedures. The researchers "frequently found that critical information was missing, or was recorded so ambiguously . . . or was reported inconsistently across the 159 counties." The study recommended that the courts: 1) maintain records in a uniform manner across all counties and jurisdictions, and 2) develop and implement a complete, statewide, computerized database.

RECOMMENDATIONS:

17. Standards and guidelines should be developed which mandate the maintenance of court records in a uniform manner in all juvenile courts throughout the state. These

6. National Council of Juvenile and Family Court Judges, *Minority Youth in the Juvenile Justice System: A Judicial Response*, JUVENILE & FAMILY COURT J. 41 (1990).

records should be organized in a manner which will facilitate case monitoring to ascertain any racial or ethnic disparity in the handling of juvenile matters.

18. The Implementation Committee should work with the Council of Juvenile Court Judges to ensure that a state-wide computerized database for all juvenile courts be developed and implemented.

The development of such a data base should occur in conjunction with data bases of other associated agencies such as the Department of Children and Youth Services and the Division of Mental Health, Mental Retardation and Substance Abuse (MHMRSA) of the Department of Human Resources, to ensure integration and compatibility. A comprehensive, integrated, readily-accessible information system could assist in ordering appropriate treatment for the juveniles by enabling judges to quickly determine the most appropriate treatment and diversion and which programs have vacancies.